STATE BOARD OF EQUALIZATION
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March 12, 2013

Re: Exclusion from Change in Ownership under Property Tax Rule 462.200(c)
Assignment No.: 13-001

Dear Mr. :

This is in response to your letter regarding the application of Property Tax Rule[1] (Rule) 462.200,[2] subdivision (c) to the Grant Deeds and Holding Agreement described in and attached to your letter. As explained below, it is our opinion that there is no change in ownership as to the interest received by Robert H , but there is a change in ownership as to the interest received by E H , unless she can demonstrate by clear and convincing evidence that she does not hold a present beneficial interest in the property.

Facts

RAH Enterprises, LLC (RAH) owned a single family residence located at Place, , California (Property). RAH is owned one-third each by Robert H , H HP and H HK .

On December 20, 2011, RAH and Robert H (Robert) entered into a Holding Agreement and executed a Memorandum of Holding Agreement. You have provided us with a copy of these documents. The Holding Agreement provided that only legal title to the Property was to be conveyed to Robert, solely for the purpose of refinancing the loan on the Property, and that he had no discretionary duties but could only act on the explicit instructions of RAH. Upon completion of the refinance, Robert was to immediately reconvey the Property back to RAH.

On May 2, 2012, RAH transferred the Property to Robert and his wife E H (E), as joint tenants, pursuant to the Grant Deed you provided to us. In addition, another Grant Deed has been prepared to reconvey the Property from Robert and E back to RAH upon completion of the refinance.

[1] All references to Property Tax Rules are to sections of title 18 of the California Code of Regulations.
[2] Rule 462(k), as you cited in your letter, was renumbered to Rule 462.200 in 1994.

Law & Analysis

Revenue and Taxation Code[3] section 60 defines a change in ownership as "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, subdivision (j) provides that "the transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person" is a change in ownership, unless an exclusion from change in ownership applies.

Additionally, according to Rule 462.040, subdivision (a), the "creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred." When husband and wife take title to property as joint tenants, the ownership interest of a spouse is the separate property of the spouse. (*Watson v. Peyton* (1937) 10 Cal.2d 156, 159; see also Property Tax Annotation[4] (Annotation) 220.0042 (October 24, 1986).) We have previously opined that "the act of taking title to property in the name of one spouse during marriage with the consent of the other spouse effectively removes that property from the general community property presumption. In that situation, the property is presumably the separate property of the spouse in whose name title is taken." (Annotation 220.0044 (October 27, 2010).)

Section 62, subdivision (b) specifically excludes from the definition of a change in ownership "[a]ny transfer for the purpose of perfecting title to the property," and Rule 462.240, subdivision (a) excludes transfers of "bare legal title" from change in ownership. This is because a transfer of bare legal title for the purpose of perfecting title does not transfer the beneficial interest in the property as required by section 60. (See *Parkmerced Co. v. City and County of San Francisco* (1983) 149 Cal.App.3d 1091, 1094.)

The owner of legal title to property is presumed to also be the owner of beneficial title to the property. (Evid. Code, § 662; Property Tax Rule (Rule) 462.200, subd. (b); see also Civil Code section 1105, providing that "fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended.") This is called the "deed presumption," and this presumption can be rebutted only by clear and convincing evidence. (Evid. Code, § 662.) There is no exception to this standard. (*Toney v. Nolder* (1985) 173 Cal.App.3d 791, 796.) Clear and convincing evidence is proof that is explicit and unequivocal, so clear as to leave no doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Tannehill v. Finch* (1986) 188 Cal.App.3d 224, 228.)

To establish that the property is actually owned differently from the ownership shown on the deed, a county assessor may give consideration to, but is not limited by, the following: (1) A written document executed prior to or at the time of the conveyance in which all parties agree that one or more of the parties do not have equitable ownership interests. (2) Evidence of the monetary contribution of each party. (Rule 462.200, subd. (b)(1) and (b)(2).) The best evidence of any fact is a final judicial finding, order, or judgment, but proof may also be made by declarations under penalty of perjury (or affidavits) accompanied by written evidence such as written agreements, canceled checks, insurance policies, and tax returns. (Rule 462.200,

[3] All statutory references are to the California Revenue and Taxation Code, unless otherwise indicated.

[4] Property tax annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State Board of Equalization's Property Tax Law Guide. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

subd. (b)(2).) Whether the presumption is rebutted is ultimately a factual determination which must be made by the county assessor based upon the evidence submitted for his or her review. As an example, we have previously opined that the submission of an unexecuted partnership income tax return showing an ownership interest in real property, by itself, is insufficient evidence to overcome the presumption that the persons named on the deed are the property owners. (Annotation 220.0582 (March 16, 1988).)

Property Tax Rule 462.200, subdivision (c) states that a transfer of property from the owner to an entity holding title pursuant to a holding agreement, or from the entity holding title back to the owner is not a change in ownership. Specifically, it states:

> **(c) Holding agreements**. A holding agreement is an agreement between an owner of the property, hereinafter called a principal, and another entity, usually a title company, that the principal will convey property to the other entity merely for the purposes of holding title. The entity receiving title can have no discretionary duties but must act only on explicit instructions of the principal. The transfer of property to the holder of title pursuant to a holding agreement is not a change in ownership. There shall be no change in ownership when the entity holding title pursuant to a holding agreement conveys the property back to the principal.
>
> (1) There shall be a change in ownership for property subject to a holding agreement when there is a change of principals.
>
> (2) There shall be a change in ownership of property subject to a holding agreement if the property is conveyed by the holder of title to a person or entity other than the principal.

In this case, RAH transferred the Property to Robert and E as joint tenants, pursuant to a Grant Deed. As a result, Robert and E each owned as separate property a one-half interest in the Property, unless there is clear and convincing evidence showing otherwise. In Robert's case, he had entered into a Holding Agreement with RAH prior to RAH's conveyance of the Property to Robert and E . The Holding Agreement states that "[RAH] will convey only legal title to [Robert] solely for the purpose of refinancing the Property. Upon completion of the refinance, [Robert] shall immediately reconvey the Property back to [RAH]. [Robert] shall have no discretionary duties and must act only on explicit instructions of [RAH]." In our opinion, this Holding Agreement constitutes clear and convincing evidence, in conformity with the requirements of Rule 462.200, subdivision (c), of a rebuttal to the deed presumption, such that the transfers from RAH to Robert, and back to RAH, are not changes in ownership.

As for E , who was granted ownership of the Property in joint tenancy with her husband, you have not provided us with any documents that rebut the presumption that she was granted legal and beneficial ownership of the Property. In the absence of any documents that constitute clear and convincing evidence that at all times E was subject to the terms of a holding agreement, was permitted to hold record title only, and that all beneficial use and control remained in RAH, it is our opinion that a reassessable change in ownership occurred as to E 's 50 percent ownership of the Property, and will occur again if she transfers the Property back to RAH. However, if any such documents exist, or if the existing Holding Agreement is in some way made applicable to E , we recommend that you provide such evidence to the

County Assessor for their review and decision on an exclusion from change in ownership.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein. Therefore, they are not binding on any person or public entity.

Sincerely,

/s/ Sonya S. Yim

Sonya S. Yim
Tax Counsel III (Specialist)

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cc: Honorable
County Assessor

Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70