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February 21, 2007

Honorable Gary W. Freeman
San Joaquin County Assessor-Recorder-Clerk
Attn:
24 South Hunter Street, Room 303
Stockton, CA 95202-3273

Subject: Change in Ownership-Joint Tenancy / Interspousal Exclusion

Dear :

This letter is in response to your July 12, 2006 correspondence wherein you enclosed a copy of a January 16, 2003 facsimile from Senior Tax Counsel Paul Steinberg concerning joint tenancy transfers and you asked that we review one of the conclusions therein, that a son-in-law's transfer of his "other than original transferor" joint tenancy interest in real property to his "other than original transferor" joint tenant wife was excluded from change in ownership. As hereinafter explained, that conclusion is correct under the interspousal exclusion.

Facts

Mother (M) owned real property and transferred it to herself, her daughter (D), and her daughter's husband (SL) as joint tenants. D and SL then divorce; SL deeds his interest in the property to D. The deed indicates that the transfer is to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage.

Analysis and Conclusions

1. Original Transfer of Joint Tenancy Interests to D and SL

Here, the facts show that M conveyed the property to herself, D and SL as joint tenants. Although Property Tax Rule¹ 462.040, subdivision (a), provides the general rule that the transfer or termination of a joint tenancy interest is a change in ownership of the interest transferred,

¹ All Property Tax Rule or Rule references are to title 18 of the California Code of Regulations.

M was among the joint tenants after the transfer. In that situation, subdivision (b)(1) of Rule 462.040 provides as follows:

The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, including an interest in a trust, and after such creation or transfer, the transferor(s) is one of the joint tenants. Such a transferor(s) is also a transferee(s) and is, therefore, considered to be an 'original transferor(s)' for purposes of determining the property to be reappraised upon subsequent transfers, . . . All other initial and subsequent joint tenants are considered to be 'other than original transferors.'

Thus, since M, the transferor, was one of the joint tenants after that transfer, the transfer was excluded from change in ownership. (See Rule 462.040, subd. (b)(1).) Furthermore, M became an "original transferor" for purposes of determining future changes in ownership. (*Ibid.*) Conversely, D and SL became "other than original transferors." (*Ibid.*)

2. Transfer to a Remaining Joint Tenant

As stated above, subdivision (a) of Rule 462.040 provides the general rule that the transfer or termination of a joint tenancy interest is a change in ownership of the interest transferred. Under the facts presented here, SL transferred his one-third interest to D, another joint tenant. Thus, absent an applicable exclusion, SL's transfer to D would have been a change in ownership of a one-third interest in the property.

3. Interspousal Exclusion

The transfer from SL to D will qualify for the interspousal exclusion set forth in subdivision (b)(5) of Rule 462.040:

The following transfers do not constitute a change in ownership:

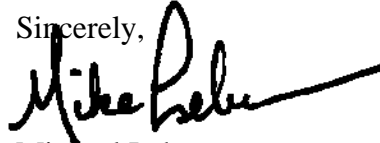
* * *

(5) The transfer is one to which the interspousal exclusion applies.

As applicable herein, Revenue and Taxation Code section 63, subdivision (c), provides that a change in ownership does not include an interspousal transfer in connection with a property settlement agreement or decree of dissolution of a marriage. Therefore, the transfer at issue qualifies for the interspousal exclusion.

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, and are not binding on any person or public entity.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Lebeau", with a long horizontal stroke extending to the right.

Michael Lebeau
Senior Tax Counsel

ML:ad
Prop/Prec/Joint Tenancy/07/06-373.ml.doc

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