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April 15, 1987

Dear Mr.

This letter is in response to your letter to me dated March 26, 1987 in which you write:

> "First, my motivating force in this matter has been fueled by the belief that in their zeal to correct the problems of Prop. 13 our legislators have seemed to ignore the basic philosophy of Joint Tenancy which is the non-separate quality of division of interests. The law says each party shall have an equal and undivided interest in the whole and when one of the entities dies they just merely drop out of the picture bringing about the right of succession by survivorship. The so-called 50% gain in my case is my question when in fact according to the philosophy of joint tenancy I had an equal and undivided interest from the inception. Otherwise why have Tenancy in Common?
>
> "Although my mother did draw a joint tenancy deed in 1956 which named me with her, I note referring to page 4 of your letter Para. (e) of Section 65 the wording of which would indicate that we were both in fact "original transferors" which point seems to argue with a part of para. (c) concerning the interest of the last surviving original transferor which I am. Or am I confused?"

In order to understand what the Legislature had in mind in enacting the joint tenancy provisions relating to change in ownership it is helpful to refer to two reports which were prepared for the Legislature's benefit. The first is the Report of the Task Force on Property Tax Administration dated January 22, 1979 which was presented to the Assembly Committee on Revenue and Taxation. It provides beginning at page 41:

"3. Tenancies-in-Common and Joint Tenancies. Tenancies-in-common and joint tenancies create undivided interests in land, with each co-tenant owning a percentage (fractional) interest. Transfer of any fractional interest is a change of ownership, but results in a reappraisal ONLY of the percentage interest transferred.

"Unfortunately, such treatment imposes a new administrative burden on assessors. It requires them to keep separate accounting records and base year values for the fractional interests which are created or transferred at different times. The Task Force saw no means of avoiding the new burden altogether, but did its best to minimize the burden.

"Under the Task Force recommendations separate accounting is not required for 'family' joint tenancies, which are the great majority of joint tenancies in this state. Thus the new burden on assessors is limited only to co-tenancies which don't fit under the 'family' joint tenancy rule and are not interspousal co-tenancies. That group of co-tenancies should not be numerous.

"4. 'Family' Joint Tenancies. Probably the vast majority of joint tenancies in California (other than interspousal joint tenancies) are those in which a parent places his property in joint tenancy with children. The special aspect of a joint tenancy (as distinguished from tenancy-in-common) is that the surviving joint tenant (or joint tenants) succeeds to the entire property by operation of law on the death of the other joint tenant. For that reason joint tenancy is often used a a substitute for a will. The same consideration which justifies excluding the making of a will from change in ownership also supports exclusion of the creation of a joint tenancy where the transferor (e.g., a parent) is one of the joint tenants. The rights of the new joint tenants (e. g., the children) to obtain the entire property outright are contingent upon their surviving the transferor joint tenant. Creation of such joint tenancies is not a change in ownership, but the entire property is reappraised when the joint tenancy terminates. Again, fractional accounting and reappraisal by the assessor is avoided.

"The rule recommended by the Task Force is general; it covers any joint tenancy created by a person who, after the creation of the joint tenancy, is one of the joint tenants, whether or not it is a parent-child joint tenancy. However, most such joint tenancies are created within a family."

The second report is entitled Implementation of Proposition 13, Volume 1, Property Taxes Assessment dated October 29, 1979 and was prepared by the staff of the Assembly Revenue and Taxation Committee. It provides, beginning at page 20:

"Joint Tenancy

"Joint tenancies create undivided interests in property, with with each co-tenant owning a percentage (fractional) interest (for property tax assessment purposes only). Under present law the creation, termination, or transfer of any fractional interest is a change of ownership (Section 61(d)), but results in a reappraisal only of the percentage interest transferred (Section 65(a)). However, there are three major exceptions to these general rules, which are noted below.

"Reversal of Policy. The 1979 legislation of AB 1488 and AB 1019 represents a complete turnaround in the treatment of joint tenancies and undivided interests, from that of SB 154. For 1978-79, the creation of a joint tenancy was the trigger for reappraisal, while any termination of a joint tenancy interest was not a change in ownership. This approach had the benefit of administrative simplicity and it avoided the need to reassess upon the death of a joint tenant.

"However, the Task Force found the SB 154 treatment to be exactly backward. It reasoned that joint tenancy confers some rights in both joint tenants while they are both alive, but the most meaningful of ownership rights--complete fee title to the whole property--would occur on the termination of the joint tenancy, such as the death of one of the joint tenants. That right, like rights under a will or intervivos trust, is contingent upon survivorship. Thus, the first exclusion to the general rule under present law is for any creation or transfer of a joint

tenancy interest where the transferor remains as one of the joint tenants after the transaction (Section 62(f)). The termination of a joint tenancy interest, however, is generally deemed a change in ownership, which is the reverse of the earlier policy.

"Reappraisal of fractional interests imposes added administrative burdens on assessors, but to reappraise the ENTIRE property whenever a change involving a single co-owner occurred would be inequitable to the other remaining co-owners. However, this is exactly what SB 154 did. While far easier to administer, this policy was also reversed in AB 1488, although Section 65(b) does provide that undivided interests of less than five percent will NOT be reappraised (Section 65(b)). For purposes of this test, transfers during the year to 'affiliated transferees', i.e., family members other than the transferor's spouse, business associates, or legal entities under common ownership, are cumulated (BOE Rule 462(b) and statute).

"Operation of Present Law. In determining whether a joint tenancy transaction constitutes a change in ownership, and if so the extent to which the property would be reappraised, AB 1488 introduced and AB 1019 refined the concept of an 'original transferor'.

"An 'original transferor' is one or more persons who hold joint tenancy interests in property immediately after a complete turnover of the previous original owners occurs. For joint tenancies created prior to March 1, 1975, it is rebuttably presumed that all owners as of that date are original transferors. The spouse of an original transferor is also considered to be an original transferor, even if he/she was added as an owner after the original acquisition. After the point in time at which the original ownership is established, no subsequent joint tenants who are added to the current ownership (except the spouses just mentioned) are treated as 'original transferors' (Section 65(a)).

"In applying the general rules noted above, there are two other major exceptions where a joint tenancy transaction is NOT a change in ownership:

"(1) Any termination of an 'original transferor's interest', IF that interest is transferred (a) by

operation of law, i.e., upon death, and (b) in whole or in part to the remaining original transferor(s) (Section 65(a)(1)). However, if the transfer is intervivos, or wholly to a non-original transferor, or there are no remaining original transferors, then the ENTIRE portion of the property held by that original transferor PRIOR to the creation of the joint tenancy will be reappraised.

"(2) Any termination of the joint tenancy interest of OTHER than an original transferor, IF the interest is transferred to an original transferor or else to all remaining joint tenants (Section 65(a)(2)). If that interest goes in whole or in part to a NEW party beyond the current joint tenants (including original transferor(s)), then a change in ownership DOES occur, and a reappraisal will be made of the proportional interest transferred, in accordance with the general rule.

"Examples. This rather complex treatment is designed to protect family joint tenancy interests, and those of original owners. The following examples show the operation of these provisions:

"(1) A brother and sister have owned a home as joint tenants since 1952. The brother dies in 1980, and by operation of law his interest vests in the sister. Result: no reappraisal, since the sister received the entire interest, as a co-original transferor. In 1985, the sister dies. Result: 100% reappraisal.

"(2) Husband A purchases a home in 1968, and becomes the original transferor in 1976 by virtue of Wife B being added as a joint tenant. She also becomes an original transferor, as A's spouse. Son C is added as a joint tenant in 1980. Result: no reappraisal because original transferors remain as joint tenants after the transfer. Son C subsequently transfers his interest wholly to his parents. Result: no reappraisal because interest of non-original transferor vested in original transferors.

"(3) Original sole owner A (since 1976) creates a joint tenancy with B in 1979, resulting in A and B as joint tenants (note that B is NOT an original transferor). A then dies, leaving B as sole owner.

Result: 100% reappraisal since the original transferor (A alone) held the entire portion of property prior to creation of the joint tenancy.

("4) Two friends, X and Y, purchase a small business as joint tenants in 1978. In 1980 they become co-original transferors by adding Y's spouse and associates R and and S as co-joint tenants. Result: no reappraisal.

"Barring any other intervivos transfer of interest, no reappraisal will occur until the survivor of X, Y, and Y's spouse dies, at which time there would be a 100% reappraisal.

"However, if X transfers intervivos to any party (current joint tenant or new person), a 50% reappraisal will occur (X held one-half of original interest). Likewise with Y unless Y transfers to Y's spouse, in which case the interspousal exemption applies. If Y's spouse transfers to anyone other than Y, a 20% reappraisal would occur (assumes one-fifth equal shares prior to transfer).

"If R or S were to transfer to the other alone, or to a new party T, then a similar 20% reappraisal would occur, due to the one-fifth interest of each. But if they transfer only to X, Y or Y's spouse, or to all remaining joint tenants, no reappraisal occurs.

"It should be noted that the original transferor is not allowed the option of transferring intervivos to either the other original transferors (if any) or to all remaining joint tenants--as non-original transferors are allowed to do--without incurring reappraisal; escape from reappraisal is allowed to an original transferor only upon the transfer of his/her interest at death, i.e., 'by operation of law'.

"The above examples, and the years used therein, are for illustrative purposes ONLY, and are certainly not inclusive of the myriad sets of circumstances involving joint tenancy transfers."

Hopefully, the foregoing will assist you in understanding the rationale for the Legislature's treatment of joint tenancy.

With respect to your reference to Section 65(e), it is true that you are rebuttably presumed to be an "original transferor" because both you and your mother held joint tenancy interests in the subject property as of March 1, 1975. Such a rebuttable presumption, however, may be rebutted or dispelled by controverting evidence covering the subject of the presumption. (Cole v. Ridings (1950) 95 Cal.App.2d 136.) Evidence that your another executed a deed granting the property to you and herself as joint tenants in 1956 as indicated in your letter is sufficient to rebut the presumption of section 65(e) that you are an "original transferor."

The rebuttable presumption found in section 65(e) permits (but does not require) the assessor to assume in cases such as yours that persons are "original transferors" when in fact they may not be. The rule is one of administrative convenience for the assessor. However, if the assessor chooses to investigate the origin of a joint tenancy such as yours, the presumption can be rebutted.

Once a joint tenancy has been terminated, the joint tenancy rules are not applicable to subsequent transactions. Thus, even if your mother's fifty percent interest (which she transferred to the revocable trust) vested in you when she died, there would be a change in ownership subject to reappraisal even though you had been an "original transferor." Such status would have ended when the joint tenancy was terminated.

In summary, since only your mother was an "original transferor," there was a change in ownership as to each fifty percent interest in the subject property as I advised you in my letter to you dated March 13, 1987. A change in ownership as to the first fifty percent interest occurred when the joint tenancy was terminated as a result of your transfer to the revocable trust. A change in ownership as to the other fifty percent interest occurred when your mother's transfer to the revocable trust became irrevocable which was either at the time of her death or the time that she transferred the property to the trust if she had no power of revocation and was not the sole present beneficiary.

If you have any further questions regarding this matter, please let us know. The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be

assessed in a manner consistent with the conclusion stated above.

Very truly yours,

Eric F Eisenlauer

Eric F. Eisenlauer
Tax Counsel

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cc: