



STATE OF CALIFORNIA

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September 11, 1985

Dear

This is in response to your letter of August 29, 1985, addressed to Mr. Richard Ochsner in which you have asked for our opinion regarding the change in ownership implications of a proposed transfer of property from a joint tenancy to a tenancy in common. The following is a summary of the facts you have provided.

Mr. and Mrs. X held title to property as joint tenants. Following the death of Mr. X, Mrs. X as surviving joint tenant, deeded a joint tenancy interest in the property to her son, resulting in Mrs. X and her son owning the property together as joint tenants. Since that time, they have had disagreements and now wish to terminate the joint tenancy and to create instead a tenancy in common of equal interests.

You have asked if the creation of the tenancy in common would trigger a Proposition 13 reappraisal. You have also asked if it would make any difference if Mrs. X deeded her one-half interest to herself using a revocable deed which would become effective only at her death.

Section 65 of the Revenue and Taxation Code (all section references contained herein are to the Revenue and Taxation Code) states, in pertinent part, that:

- (a) The creation, transfer, or termination of any joint tenancy is a change in ownership....

September 11, 1985

- (b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants.

Rule 462(c) which interprets these code sections states that:

- (1) Except as is otherwise provided in subdivision (2), the creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

- (2) Exclusions:

- (A) The transfer creates or transfers any joint tenancy interest and after such creation or transfer, the transferor(s) is one of the joint tenants.

* * *

- (D) For other than joint tenancies described in A, the transfer is between or among co-owners and results in a change in the proportional interests of the co-owners....

Mrs. X created a joint tenancy in herself and her son in property of which she had been the sole owner. This transfer can be excluded from change in ownership under section 65(b) and rule 462(2)(A) because Mrs. X, the transferor, created a joint tenancy in which she was one of the joint tenants. However, if Mrs. X and her son transfer the joint tenancy into a tenancy in common of equal interests, a change in ownership of 50 percent, or one-half of Mrs. X's original interest, will occur. Although rule 462(c)(2)(D) provides an exclusion to the basic principle that the transfer of a joint tenancy interest is a change in ownership of the interest transferred, this exclusion applies only to "other than joint tenancies described in (A)" (meaning 462(c)(2)(A)). Since the creation of the joint tenancy by Mrs. X in herself and her son was excluded by 462(c)(2)(A), the exclusion provided by 462(c)(2)(d) does not apply. Therefore, 50 percent of the property will be reappraised upon a transfer from joint tenancy to tenancy in common.

You have also asked if the creation of a tenancy in common by revocable deed which would become effective only at Mrs. X's death would produce a different result. The conveyance by deed

September 11, 1985

of title to real property which is to be enjoyed by the grantee only at the death of the grantor creates an interest in the grantee subject to the reservation of a life estate in the grantor (Merritt v. Rey (1930) 104 Cal.App. 700). The effect of such reservation of a life estate is that the deed conveys to the grantee a future interest only. Such a grant can be described as a present conveyance of a vested future interest, which interest will become a present interest following the termination of the reserved life estate (Tennant v. John Tennant Memorial Home (1914) 167 Cal. 570).

Section 60 sets forth the basic definition of change in ownership and states that:

A "change in ownership" means 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.

This definition is restated in rule 462(a)(2) which provides that:

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.

Thus, the regulation amplifies the definition provided by the statute that a change in ownership requires a transfer of a present interest and a transfer of the beneficial use of property. If Mrs. X as joint tenant grants by revocable deed an interest to herself as a tenant in common, she will apparently create the equivalent of a life estate in joint tenancy with a vested future interest as a tenant in common. Since a change in ownership by statutory definition requires the transfer of a present interest in the property, such a grant by revocable deed would not be a change in ownership. However, at the time of Mrs. X's death, the future interest would become a present interest. Her conveyance of her joint tenancy interest to herself as tenant in common would effectively terminate the joint tenancy. Thereafter, the parties would own their respective interests in the property as tenants in common (Riddle v. Harmon (1980) 102 Cal.App.3d 524). The son's one-half interest in the property would be reappraised at this time. Further, since Mrs. X's interest

September 11, 1985

would also be transferred to her heirs at the time of her death, her interest would also be reappraised at that time.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described transaction will be assessed in a manner consistent with the conclusion stated above.

Sincerely,

Barbara G. Elbrecht
Barbara G. Elbrecht
Tax Counsel

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