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July 10, 1991

Honorable Bradley L. Jacobs
Orange County Assessor
630 North Broadway
Santa Ana, CA 92702
Attn: Michael Wyatt
Appraiser II, Quality Assurance

Re: Change in Ownership - Joint Tenancy

Dear Mr. Jacobs:

This is in response to your letter of June 12, 1991, to Mr. Richard Ochsner, Assistant Chief Counsel, in which you request our opinion and analysis regarding whether the termination of a joint tenancy interest caused a change in ownership for property tax purposes. The facts are taken from the opinion written by the County of Orange Deputy County Counsel.

On August 24, 1972, a grant deed was recorded by which G and L, husband and wife, as joint tenants, conveyed a residence situated in Garden Grove to E and J, mother and son, as joint tenants.

E died December 30, 1982. As the surviving joint tenant, J became sole owner of the subject property. As a result of E's death, the Orange County Assessor determined that a change in ownership occurred with respect to fifty percent of the subject property and, as required by law, reappraised fifty percent of the property as of the date of the change in ownership (the date of E's death).

The Orange County Assessor became aware of E's death during May 1990 when an affidavit of Death of Joint Tenant was recorded with the County Recorder. The Orange County Assessor issued escape assessments, reflecting the assessment increase for several years prior to 1990. J, filed appeals from the escape assessments and raised the issue whether the subject property underwent a reassessable change in ownership upon the death of one of the joint tenants in 1982. Apparently, the view of the Deputy Orange County Counsel,

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, is that the subject property did not undergo a reassessable change in ownership upon the death of E and the escape assessments should be cancelled. For the reasons set forth below, we must respectfully disagree with Mr. 's conclusion.

Section 65 of the Revenue and Taxation Code (all section references contained herein are to the Revenue and Taxation Code unless otherwise stated) provides:

- (a) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.
- (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. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on subsequent transfers. The spouses of original transferors shall also be considered original transferors within the meaning of this section.
- (c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section.
- (d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred

either to an original transferor or to all remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.

(e) For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, shall be an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

Section 65.1 provides in relevant part:

(a) Except for a joint tenancy interest described in subdivision (f) of Section 62, when an interest in a portion of real property is purchased or changes ownership, only the interest or portion transferred shall be reappraised.

Section 62(f) excludes from change in ownership "[t]he creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65."

Section 65(a) provides the general rule that the creation, transfer, or termination of any joint tenancy is a change in ownership unless otherwise provided in sections 62, 63, and 65.

Subdivision (c) of Property Tax Rule 462 (18 Calif. Code of Regulations Section 462) interprets and makes specific the statutory provisions relating to joint tenancy interests. See, in particular, subdivision (c)(2) which explains the "original transferor" provisions with examples and (c)(1) which describes the facts of this case.

Section 63 excludes from change in ownership all interspousal transfers. Since E and J were mother and son, respectively, they were not spouses. Therefore, section 63 does not apply.

In regards to section 62, only section 62(f) relates specifically to joint tenancies and it provides for the same exclusion from change in ownership as section 65(b), which will be discussed below. However, no subdivision of section 62 is applicable to the facts as presented.

Section 65(b) provides that if upon the creation or transfer of a joint tenancy interest, the transferor or transferors are among the transferee joint tenants, they "shall be the 'original

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transferor or transferors' for purposes of determining the property to be reappraised on subsequent transfers." Thus, a joint tenant transferee qualifies as an original transferor because that joint tenant was one of the transferors of the property subject to the joint tenancy. As illustrated in Property Tax Rule 462(c)(2)(A), where C and D, as joint tenants, transfer to C, D, E and F, as joint tenants, C and D qualify as original transferors.

When E and J became joint tenants of the subject property in 1972 they were transferees but neither was a transferor. The transferors were G and L. Since neither E nor J was a transferor when the transfer creating the joint tenancy was made in 1972, neither was an original transferor as defined in section 65(b). Even though E and J were rebuttably presumed to be original transferors under section 65(e) because they were joint tenants on March 1, 1975, of a joint tenancy created prior to that date, the grant deed showing that E and J were not transferors when the joint tenancy was created (and thus legally incapable of being original transferors under section 65(b)) clearly rebuts the presumption of section 65(e).

Since no exclusion from change in ownership is available here under sections 62, 63, or 65, the transfer or termination of the joint tenancy interest resulting from Estelle Laird's death was a change in ownership under the general rule of section 65(a). Pursuant to section 65(a) and 65.1(a), only fifty percent is subject to reappraisal. As indicated in Property Tax Rule 462(c)(1)(A), fifty percent of the subject property is subject to reappraisal since none of the exclusions provided for in Property Tax Rule 462(c)(2)(A-H) apply.

Based on all of the foregoing, there is no legal basis to conclude that a fifty percent change in ownership did not occur on the death of E.

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,



Carl J. Bessent
Tax Counsel

CJB:jd
3957H

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