



STATE BOARD OF EQUALIZATION

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June 30, 1988

Dear Ms. Redacted:

This is in response to your letter of May 6, 1988 to Richard H. Ochsner in which you request our opinion concerning the change in ownership implications of the following facts contained in your letter, the corporate By-Laws and Articles of Incorporation, telephone conversations with you, as well as information received from the Ventura County Assessor's office which has also requested our opinion in this matter. (Although your letter was written in your official capacity as a Deputy Savings and Loan Commissioner, a copy of the assessment appeal application for Redacted furnished by Ventura County indicates that you are the company's Secretary/Treasurer and presumably have a direct personal interest in this matter. Please be advised that this office responds to questions from the general public as well as to inquiries from public officials.)

Redacted is a nonprofit corporation which owns record title to a 67-acre parcel consisting mostly of a recreation and campground area. According to a representative of the Assessor's office the parcel has a market value in excess of \$100,000. The corporation was formed for the purposes of acquiring a tract of land upon which the members of the corporation could construct mountain cabins and using it for recreational and social purposes. The camp is restricted to about 20 members. Twelve of the members own private cabins on the property. Many of the cabins are approximately thirty years old. The newest one was built in the early 1960s. There are also a clubhouse all members can use and a cabin occupied by a caretaker. There originally were 20 cabins but several were destroyed in a flood. In 1969, after the flood, some cabin owners wanted to replace their destroyed cabins and were advised that a subdivision map would be required in order to obtain building permits. A proposed map was drawn, but no action was taken by Redacted because it was determined that the requirements for obtaining building permits could not be met. No cabins have been rebuilt. No action was taken by the board of directors or the membership to authorize division of the real property into lots and the map has not been recorded. The map was only a proposal drawn for the purpose of initiating the process of obtaining building permits to replace cabins lost in the flood. The County of Ventura will not allow and subdivision map act regulations that have made reconstruction prohibitive.

The cabin owners do not pay rent for the land upon which their cabins rest. There are no written or oral rental or lease agreements. The members pay fees to the corporation in sufficient amount to cover immediate expenses; however, the cabin owners pay a slightly higher fee because they

consume more water than members who don't own cabins and the increased fee is used to defray pump maintenance expense.

Under the By-Laws, all property and assets of Redacted belong to the members but only as long as they retain actual membership. Upon loss of membership, the member's cabin must be removed or sold to other members or it becomes the property of Redacted. The By-Laws also provided that memberships may be transferred to any person who is acceptable to the club other than another member. Similarly, a membership may be transferred by the personal representative of a deceased member within specified time limits. Purchase prices for membership thus far have not exceeded approximately \$1000. The By-Laws further provide that all interest in the property of the club of members ceasing to be such by resignation, dismissal (for misconduct or failure to pay dues) or otherwise shall pass to the members of the club. Such resignation or dismissal shall operate as a release and assignment of the right, title and interest of such members in and to the property and assets of the club.

Five of the cabins have undergone a change in ownership since 1975. The Assessor has presumed that a long term land lease is in existence. When a transfer occurs a new base year value is established for both the cabin and an imputed one-acre lot upon which the cabin sits. The landowner, Camp Bartlett, is assessed for the value of the land because it is the owner on the secured roll. The cabins are assessed on the unsecured roll to the individual owners. Redacted has filed an application for a hearing before the Assessment Appeals Board.

You and the Assessor ask (1) whether the assessor can presume the existence of a lease for purposes of Revenue and Taxation Code* section 61 (c) in the absence of a written or oral lease agreement and in the absence of rental payments and if so (2) whether the assessor should impute a reasonable lot size for each of the cabins or simply use the footprint of the cabin itself.

Section 61 provides in relevant part that “. . . change in ownership as defined in Section 60, includes but is not limited to:

(c) (1) The creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options), the termination of a leasehold interest in taxable real property which had an original term of 35 years or more (including renewal options), and any transfer of a leasehold interest having a remaining term of 35 years or more (including renewal options); or (2) any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of less than 35 years.

Only that portion of a property subject to such lease or transfer shall be considered to have undergone a change of ownership.

*All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

For the purpose of this subdivision, for 1978-80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than mobilehomes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800), which are on leased land have a renewal option of at least 35 years on the lease of such land, whether or not in fact such renewal option exists in any contract or agreement.

Section 60 defines "change in ownership" to mean "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."

In order for the conclusive presumption of section 61 (c) to apply, two conditions must be satisfied. There must be homes which are eligible for the homeowners' exemption and the homes must be on leased land.

To be eligible for the homeowners' exemption, a home must be occupied by an owner as his principal residence and not as a vacation or secondary home (California Constitution, article XIII, section 3 (k), section 218). Although the facts don't indicate whether the cabins in question are occupied by the owners as principal residences, it is my impression that they are not. If not, the conclusive presumption of section 61 (c) does not apply even though the cabins are found to be on leased land.

With respect to whether the cabins are on leased land, it is undisputed that there are no express oral or written rental or lease agreements and that no rent is paid by members including cabin owners. The only type of leasehold estate which may be created by the implied agreement of the parties revealed by our research is that of a tenant at will (Covina Manor, Inc. v. Hatch (1955) 133 Cal.App.2d, Supp. 790). Such a tenancy is terminable at the will of either party. (Ibid.)

Neither the By-Laws, Articles of Incorporation, nor any other facts presented indicate that a member's interest in the property indicate that a member's interest in the property in question is terminable at the will of the corporation. In fact, the By-Laws, do not contemplate a landlord-tenant relationship at all. Rather, as indicated above, the By-Laws appear to confer a beneficial real property ownership interest in the members for as long as they remain members. For members who own cabins, this interest would include the present beneficial use of the land under their cabins (i.e., footprint land) as well as a right in common with other members in the 67 acres to the extent such land is not occupied by cabins. Of course, if it is the custom and practice of the members to exercise a right of exclusive use and occupancy of some reasonable areas surrounding the cabin, such as areas used for vehicle parking or other uses related to occupancy of the cabin, it could be argued that the interest of the cabin-owner includes this portion of the land as well.

Therefore, we are of the opinion that the assessor cannot presume the existence of a lease for purposes of section 61 (c). However, while it does not appear that section 61 (c) is applicable with respect to the issuance or transfer of memberships, it is arguable that the ownership rights in the subject land which members enjoy are sufficiently similar to those inherent in a life estate to treat the issuance or transfer of memberships as a change in ownership of that land pursuant to

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Property Tax Rule 462 (d). Moreover, the ownership rights of a member are similar to those of a shareholder in a cooperative housing corporation which when transferred constitute a change in ownership under section 61 (h). We note, however, that even assuming the issuance or transfer of a membership is a change in ownership, no reappraisal would appear to be required under section 65.1 (a) if the market value of a member's interest in the land (as indicated by purchase prices or memberships) is less than five percent of the value of the total property and less than \$10,000.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. It is within the power of the assessor to determine how property located within his jurisdiction should be appraised.

If you have further questions regarding this matter, please let us know.

Very Truly Yours,

Eric F. Eisenlauer
Tax Counsel

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