



STATE OF CALIFORNIA

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November 30, 2004

Re: *Change in Ownership: Purchase of Lessor's Interest in Real Property Subject to a Lease*

Dear Ms. _____ :

This is in response to your email dated November 10, 2004, requesting our opinion as to whether the purchase by a homeowner/lessee of the lessor's interest in real property subject to a lease with a remaining term (conclusively presumed) of 35 years or more constitutes a change in ownership of the real property. As discussed below, we conclude no change in ownership of the real property will occur pursuant to the provisions of Revenue and Taxation Code section 62, subdivision (g),¹ and California Code of Regulations, Title 18, section (Rule) 462.100, subsection (b)(2)(A).

Factual Background

A group of 50 homeowners each purchased or built single-family residences on parcels of real property leased from a third party ("S") for a period of less than 35 years. None of the residences are manufactured homes, and each residence qualifies for the homeowners' exemption set forth in section 218. The homeowners would now like to purchase from S the real property underlying their respective residences. The purchase would, in effect, terminate the leases. The homeowners thus question whether their purchase of the real property from S will result in a change in ownership.

Applicable Law and Analysis

Section 60 provides that a change in ownership means (1) a transfer of a present interest in real property, (2) including the beneficial use thereof, (3) the value of which is substantially equal to the value of the fee interest. (*Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 162.) Section 61 provides in relevant part that "[e]xcept as otherwise provided in section 62, 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

¹ All section references are to the Revenue and Taxation Code unless stated otherwise.

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. [¶] . . . [¶] For the purpose of this subdivision, for 1979-80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than manufactured homes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800), that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement."

Section 62 provides in relevant part that a "[c]hange in ownership shall not include:

"[¶] . . . [¶] (g) [a]ny transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more. For the purpose of this subdivision, for 1979-80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than manufactured homes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800), that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement."

The conclusive presumption found in sections 61, subdivision (c), and 62, subdivision (g), was adopted in 1979 as the Legislature's solution to a unique problem pertaining to certain leased lands in Orange County. A large number of residential lots, some improved with single family homes, were transferred by the lessor to the Irvine Company. Many of the lots were leased to homeowners under leases with remaining terms of less than 35 years, subjecting those properties to change in ownership and reappraisal. To avoid that result, the Legislature adopted the conclusive presumption language, which expressly provides that whenever a home eligible for the homeowners' exemption is on leased land, the term of the lease shall be conclusively presumed to have a 35-year renewal option for all purposes. Thus, the actual term of the lease is to be disregarded by the assessor in favor of the 35-year "fictional" term.

The Board has interpreted sections 60, 61, subdivision (c), and 62, subdivision (g), in Rule 462.100, which provides in relevant part:

"(a) The following transfers of either the lessee's interest or the lessor's interest in taxable real property constitute a change in ownership of such real property:

"(1) Lessee's Interest:

"[¶] . . . [¶] (C) the termination of a leasehold interest which had an original term of 35 years or more.

"[¶] . . . [¶] (b) The following transfers of either the lessee's interest or the lessor's interest in taxable real property do not constitute a change in ownership of such real property:

"[¶] . . . [¶] (2) Lessor's interest:

“(A) The transfer of a lessor’s interest in real property subject to a lease with a remaining term of 35 years or more, whether to the lessee or another party.”

Initially, the conclusive presumption of sections 61, subdivision (c), and 62, subdivision (g), makes clear that the leases in your case are presumed to include a renewal option of at least 35 years. With this in mind, the statutory and regulatory rules cited above, specifically, sections 61, subdivision (c)(1), and 62, subdivision (g), and as interpreted in Rule 462.100, subsections (a)(1)(C), and (b)(2)(A), appear to contain a conflict in whether or not the transfer of real property subject to a lease with a remaining term (including renewal options) of 35 years or more is a change in ownership. This apparent conflict is resolved, however, by the introductory language of section 61, which states “[e]xcept as otherwise provided in Section 62, . . .” This statutory language makes clear that the rule in section 62, subdivision (g), excluding from a change in ownership a transfer of a lessor’s interest in taxable real property subject to a lease with a remaining term of 35 years or more, constitutes an exception to the general rule of section 61, subdivision (c), that the termination of a leasehold interest with a remaining term of more than 35 years is a change in ownership. (See Eisenlauer letters, dated 12/16/93, 3/30/90, attached.) The Board adopted this interpretation in Rule 462.100, subsection (b)(2)(A), which specifically states that a change in ownership does not include the transfer of a lessor’s interest in real property subject to a lease with a remaining term of 35 years or more, whether to the lessee or another party. As a result, the purchase by the homeowners/lessees from S of the real property underlying their respective residences and subject to leases with a term conclusively presumed to be for a period of 35 years or more will not constitute a change in ownership.

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,

/s/ Reed Schreiter

Reed Schreiter
Senior Tax Counsel

RS:eb
Prec/13Leases/04/05-LA

cc: Honorable

Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70