

Memorandum

To : Mr. Verne Walton

Date : November 2, 1989

From : Eric F. Eisenlauer

Eric F Eisenlauer

Subject : Legal Opinion - Life Estate/Possessory Interest Question in Trinity County

This is in response to your memo of October 3, 1989 to Mr. Richard Ochsner in which you request our input with respect to the following facts.

By a Grant Deed dated September 12, 1985 and recorded October 24, 1985, Richard , a married man, as to his separate property, as to an undivided 4/5 interest and John , a married man, as to his separate property, as to an undivided 1/5 interest granted to the United States of America certain real property located in County. The Grant Deed contained the following provisions with respect to a portion of the land conveyed:

We, RICHARD and JOHN , the grantors herein, being now and years of age, respectively, reserve the right to occupy and use, for two existing residences and five out-buildings, and for cultivation in relation to said residences and out-buildings, for the remainder of the grantors' lives, jointly and individually, subject to the rules and regulations of the Secretary of Agriculture (see 36 CFR 251.17) attached hereto and made a part hereof

This life time reservation is SUBJECT TO the following conditions:

1. Public access to and use of the South Fork of the River frontage will be allowed over the property subject to the lifetime reservation;
2. Public access to and use of the south end of the pasture located on the property, subject to the lifetime reservation, will be allowed for public parking;
3. Public access to and use of the public trail running in a north-south direction along the west line of the pasture located on the property, subject to the lifetime reservation, will be allowed.

36 CFR 251.17 is attached hereto as exhibit A.

As a result of the foregoing transfer, the Assessor has created a separate parcel for the portion of the property in which the life estate was reserved, transferred it to the unsecured roll and has now raised the question of whether the subject property should be treated for assessment purposes as a life estate or a possessory interest and whether it should be revalued each year at a reduced value.

Revenue and Taxation Code* section 110.1 provides generally that for purposes of subdivision (a) of section 2 of article XIII A of the California Constitution, "full cash value" of real property, including possessory interests in real property, means the fair market value for the 1975 lien date or thereafter on the date a change in ownership occurs or new construction is completed. The value so determined is the base year value of the property.

Revenue and Taxation Code section 51 provides in relevant part that:

For purposes of subdivision (b) of Section 2 of Article XIII A of the California Constitution, for each lien date after the lien date in which the base year value is determined pursuant to Section 110.1, the taxable value of real property shall be the lesser of:

(a) Its base year value, compounded annually since the base year by an inflation factor, which shall * * * not exceed 2 percent of the prior year's value.

(b) Its full cash value, as defined in Section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value.

* * *

(e) For purposes of subdivisions (a) and (b), "real property" means that appraisal unit which persons in the market place commonly buy and sell as a unit.

Property Tax Rule 462(e) provides that "[t]he creation, renewal, sublease, or assignment of a taxable possessory interest in tax exempt real property for any term is a change in ownership except

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

when the interest, whether an estate for years or an estate for life, is created by a reservation in an instrument deeding the property to a tax exempt governmental entity." (Emphasis added.)

Property Tax Rule 21(a) defines "possessory" interest as "an interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of land and/or improvements unaccompanied by the ownership of a fee simple or life estate in the property."

Under the Property Tax Rules quoted above, the conveyance to the United States of America with a reservation of a life estate to the grantors did not result in the creation of a taxable possessory interest or a change in ownership with respect to such parcel. Thus, for purposes of applying section 51, the existing adjusted base year value attributable to the parcel in which the life estate was created must be compared to the market value of the same appraisal unit, i.e., the parcel in which the life estate was reserved but not the life estate itself. The market value of such appraisal unit must be determined in accordance with section 110, i.e., without regard to the fact that the property was conveyed to the government with life estates reserved to the grantors.

Accordingly, unless the market value of the parcel so determined (rather than the market value of the life estate in the parcel) is less than its adjusted base year value, the parcel must be assessed at its adjusted base year value for each lien date notwithstanding the fact that the market value of the life estate in the parcel may diminish each year.

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Attachment

cc: Mr. John W. Hagerty