

(916) 445-6453

June 30, 1983

Mr. Jack Quinn
Chief Appraiser
Amador County Assessor's Office
108 Court Street
Jackson, CA 95642

Dear Mr. Quinn:

This is in reply to your letter to Mr. Lawrence Augusta dated June 16, 1983, in which you ask whether a change in ownership occurred under the following facts:

1. In July 1972, A and B, husband and wife, purchase a single family residence as joint tenants as a home for A's widowed mother, C. A and B made the down payment and all monthly payments except for \$55 per month, which was paid by C until her death in February 1982.
2. In June 1977, A and B conveyed to C a life estate in the real property so long as C:
 - "(a) Personally resides upon, occupies and uses said Real Property as her permanent abode or residence and no other person or persons shares with her such residence, occupancy or use, and
 - "(b) Does not transfer, sell, convey, dispose, hypothecate or in any way encumber any interest in said Real Property, and
 - "(c) Does not remarry, and
 - "(d) Maintains the physical condition and appearance of the Real Property substantially in the same physical condition."

The deed was recorded in January 1978.

3. The life estate was created by A and B the suggestion of the social security administrators in order to avoid reducing C's social security benefits. According to A, the life estate "was not intended to be the equivalent of the value of the fee interest, or a transfer of ownership". C, at the time the conveyance of the life estate was recorded, executed a grant deed in favor of A and B. This conveyance was not recorded.
4. All property taxes and insurance premiums on the property were paid by A and B.
5. In February 1982, C died.
6. In November 1982, an Affidavit, Death of Grantee in Life Estate, was recorded with respect to C and the real property in question.

Revenue and Taxation Code Section 60 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." More specifically, Section 61(f) provides that "except as otherwise provided in Section 62, change in ownership, as defined in Section 60, includes, . . . :

"Any vesting of the right to possession or enjoyment of a remainder or reversionary interest which occurs upon the termination of a life estate or other similar precedent property interest, except as provided in subdivision (d) of Section 62 and in Section 63."

Property Tax Rule 462(d)(1) provides:

"(1) Life estates. The creation of a life estate in real property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor's spouse. However, the subsequent transfer of such a life estate by the transferor or the transferor's spouse to a third party is a change in ownership. Upon termination of such a reserved life estate, the vesting of a right to possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership."

By the terms of the conveyance to C from A and B in June 1977, which was recorded in January 1978, C received a life estate. It is true that C's enjoyment of her life estate was limited for "so long as" she complied with the conditions set forth in (a) through (d) of the grant deed. Such conditions, however, do not invalidate the grant of a life estate which, as in the case of any other freehold estate, can provide for a termination upon the occurrence of a certain event such as for failure to reside on the premises. Taylor v. McCowen (1908) 154 Cal. 798.

Since C received a life estate by the conveyance from A by the conveyance from A and B, which was recorded in January 1978, there was presumably a change in ownership at that time. (Rev. & Tax, Code Sec. 60, Property Tax Rule 462(d)(1) and (n)(1)(A).) Since A and B granted to C a lesser interest in the property than they owned, they were left with a reversion in the property (Civil Code Sec 762, Alamo School District v. Jones (1960) 182 Cal. App. 2d 180.)

In January 1978, C executed a grant deed back to A and B. If this deed was legally delivered, it would have the effect of conveying to A and B whatever interest C had in the property which, as indicated above, was a life estate. This, of course, would have terminated C's life estate in the property and would have resulted in another change in ownership at that time under Revenue and Taxation Code Section 61 (f) quoted above. A legal delivery requires an intention by the grantor that the instrument be presently operative and effective to transfer the title to the grantee and that the grantee becomes the legal owner. Huth v. Katz (1947) 30 Cal. 2d 605.

Here, the deed from C to A and B was never recorded. C continued to reside on the property for the duration of her life. The life estate was not terminated of record until the Affidavit, Death of Grantee in Life Estate, was recorded in November 1982. Moreover, there are no facts here to indicate that C intended to convey her life estate away. The real intention for executing the deed seemed to be only to ensure that A and B still had fee title to the property, which was not necessary since C never had fee title and A and B never relinquished fee title. From the foregoing facts, I don't believe C intended to terminate her life estate. C's deed was, therefore, never legally delivered. Accordingly, C's life estate in the property continued until she died in February 1982. At that time C's life estate terminated. Upon the termination of C's life estate, the right to possession or enjoyment of the reversionary interest of A and B vested. Such occurrence is a change in ownership under Section 61(f) quoted above.

The taxpayers argue, however, that they paid all property taxes and insurance premiums on the property apparently to establish that they were and always had been the owners of the property. While it is true that such payments are the obligation of the life tenant and not the remainderman or reversioner, C in this case did pay \$55 per month which probably exceeded the cost of taxes and insurance. Moreover, even had C paid nothing, payment of taxes and insurance premiums by A and B does not prove that C did not have a life estate. Payment of such obligations by A and B could be characterized as gifts or loans to C.

In any event, even though C's life estate was more restrictive than typical life estates, Section 61(f) nevertheless clearly applies because in addition to life estates, it applies to the termination of "other similar precedent property interest(s)." C's interest here, if not a life estate within the traditional meaning of that term, was at the very least, a "similar precedent property interest" because the right of A and B to possession or enjoyment did not vest until C's interest termination either by death or by occurrence of one or more of the conditions listed in the deed.

Accordingly, there was, in my opinion, a change in ownership under Section 61(f) when C died.

Very truly yours,

Eric F. Eisenlauer
Tax Counsel

EFE:fr

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Legal Section