State of California

Board of Equalization

Memorandum

To : Mr. Verne Walton

Date : March 12, 1987

From : Michele F. Hicks

Subject: Revenue and Taxation Code Section 62(1)

This is in response to your memo dated January 6, 1987, in which you ask our opinion on the Applicability of section 62(1) to a situation which arose in Mariposa County. The facts as stated in a letter from the Mariposa County Assessor's office to you are as follows:

"1) In about 1975 the Appellant purchased a parcel of land for use as a lumber storage area.

2) At the time of sale our records showed the correct legal description and was so reflected in our plat maps. (Showing a pointed boundary line.)

3) At some time after the sale the Appellant claims to have talked with the adjoining landholder who told him that the property boundary was the old fence line. (A straight line.)

4) About 2 years ago the adjoining property owner surveyed his property for development and found that the legal description was not the fence line and that the Appellant now had a building situated on land that was owned by him. (Adjoining owner.)

5) To reconcile this error and presumably avoid litigation a lot line adjustment was made based on the legal description property boundary and each party granted the other 5897 square feet of land."

Mariposa County reappraised each of the areas traded in the lot line adjustment on the basis that each party had gained a fee simple interest in land that neither owned before the transfer. The assessor further points out that the property that was in question consisted of 3,968 square feet but the adjustment was made for 5,897 square feet, 1,929 square feet more than the purported discrepancy.

One of the property owners appealed the assessor's reappraisal to the Appeals Board on the basis that the exchange was excluded from change in ownership under section 62(1). The Appeals Board found in favor of the property owner. The assessor has asked us the following four questions:

"1) What is the S.B.E. interpretation of 62(1)? And what position do you believe a survey team would take if the lot line adjustment were a sample item?

2) Based on this interpretation, was our office correct in revaluing a portion of or all of the subject property?

3) As the Appeals Board has ruled that we cannot revalue the subject should we also roll back the revaluation of the other half of the lot line adjustment?

4) What are the implications of this decision to other lot line adjustments?"

Revenue and Taxation Code section 62(1) provides that a change in ownership shall not include:

> Any transfer, which would otherwise be a transfer subject to reappraisal under this chapter, between or among the same parties for the purpose of correcting or reforming a deed to express the true intentions of the parties, provided that the original relationship between the grantor and grantee is not changed.

Revenue and Taxation Code section 62(1) was originally enacted by Assembly Bill 2718, Chapter 911, Statutes of 1982. Fifteen days later, Assembly Bill 3382, Chapter 1465, Statutes of 1982, was filed with the Secretary of State. That bill also amended section 62 of the Revenue and Taxation Code. There was some uncertainty concerning the operative date of AB 2718 and the resulting status of the two versions of section 62 which is not relevant to the present question, however, the end result was that the amendments made by AB 2718 were effectively chaptered out by AB 3382. We have researched the history of both bills, and have been unable to find anything in the legislative background of either one to help us in our interpretation of section 62(1). Heretofore, it has been our position that section 62(1) is merely a codification of the position set forth in Rule 462(k) pertaining to the transfer of a security interest and deed presumptions. (Letter to Assessors No. 83/20, dated February 18, 1983.)

Without any legislative history or background to guide us in our interpretation, we must look to the literal wording of section 62(1) to determine its meaning. Section 62(1) excludes from reappraisal any transfer which would otherwise be subject to reappraisal, for the purpose of correcting or reforming a deed to express the true intentions of the parties. Therefore, the purpose of a transfer covered under section 62(1) must be to correct or reform a deed to express the true intentions of the parties.

Reformation assumes a valid deed which, by mistake, does not express the actual intent of the parties. (Douglass v. Dahm (1950) 101 Cal.2d 125, 128.) This is the element which is common in the cases concerning reformation of a deed. In Berendsen v. McIver (1954) 126 Cal.App.2d 347, two business partners purchased property as tenants in common, but, by mistake, a joint tenancy form deed was used. The mistake was discovered after the death of both parties. One of the heirs brought an action to have the deed reformed to a deed in tenancy in common. The court held that the mistake of a draftsman is a good ground for the reformation of an instrument which does not truly express the intention of the parties.

In Vecki v. Sorensen (1954) 127 Cal.App.2d 407, adjoining landowners agreed that one would sell one acre to the other. In fact, the deed described an area in excess of one and a half acres. The deed was reformed to describe the original acre intended to be transferred.

In Renshaw v. Happy Valley Water Co. (1952) 114 Cal.App.2d 521, the water company originally conveyed by deed property subject to certain restrictions and reservations. Circumstances later required a second deed to be executed. The water company intended that the second deed would also convey the property subject to the same restrictions and reservations as present in the first deed but inadvertently omitted them in the second deed. The court granted reformation of the second deed to reestablish the restrictions and reservations.

It can be seen from the foregoing cases, that reformation or correction of a deed involves situations where the original deed did not express the actual intent of the parties. The deed is then reformed to express what the parties actually intended.

The case in Mariposa County is not a situation where a deed has been reformed to express the true intentions of the parties. In the Mariposa County case, the parties knew the correct

boundary when they executed their deeds. The transfer was a double conveyance of land. By the very terms of section 62(1), that statute is not applicable. Therefore, our response to the four questions posed by Mariposa County are as follows:

1. Our interpretation of section 62(1) is that it applies to those cases where a deed needs to be reformed because it fails to express the actual intention of the parties whether by inaccurately describing the property intended to be conveyed, by omitting or adding some term not agreed to by the parties, or in some other manner failing to express the true intentions of the parties.

2. Based on the interpretation above, we believe that Mariposa County was correct in revaluing the property that was exchanged.

3. We do not believe that the revaluation of the other half of the lot line adjustment should be rolled back. There is no statutory authority for such a rollback.

4. We believe that there is no statutory basis for the Appeals Board's decision. Therefore, we believe that in other lot line adjustments which result in double conveyances, such as in the present case, the transferred property should be revalued.

If you have any further questions or wish to discuss this further, please contact me.

MFH:cb Michelle F. Hicks
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cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Darold Facchini