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October 2, 1980

This is in response to your letter of September 15, 1980, to Mr. Glenn Rigby in which you ask whether a partition, which took two assessment years to fully execute, renders the "change in ownership" exclusion provided by Section 62(a) of the Revenue and Taxation code inapplicable.

Based on the letter and materials you sent and information obtained from the Napa County Assessor's Office, it is our understanding that the facts in this particular case are as follows:

1. On October 8, 1976 B _____ grants to M _____ 5/9 undivided interest in certain property located in Napa County. On the same date, the parties executed an agreement providing that B _____ and M _____ held their respective 4/9 and 5/9 undivided interests as tenants in common.
2. In 1978, the parties determined that a partition of their tenancy in common interests in the property was necessary and they agreed upon a proportional division of the physical real property and improvements to represent their respective 4/9 and 5/9 undivided interests. (I do not have a copy of this agreement, nor knowledge of the exact terms thereof, but I will assume it was written and can be produced.)
3. On February 9, 1979, the final parcel map reflecting division of the parcel in conformance with a partition agreement was recorded. Thereafter, the Napa County Assessor revised his parcel map to reflect the new parcels created by subdivision by assigning APN _____ and _____ to old APN.
4. On March 5, 1979, B _____ executed a grant deed to M _____ of her 4/9 interest in APN.
5. On March 25, 1989, M _____ executed a grant deed to B _____ of his 5/9 interest in APN.

Section 62(a) of the Revenue and Taxation Code excludes from the definition of change in ownership, "any transfer between co-owners which results in no change in the method of holding title to the real property without changing the proportional interests of the co-owners, such as a partition of a tenancy in common." Simply from the face of the B _____ to M _____ - deed executed on March 5, 1979, it appears that there was a change in ownership as to the 4/9 interest in the 1980-81 assessment year and that

Section 62(a) is not applicable because M _____ obtained a 1005 interest in fee simple absolute to APN _____. Absent evidence of an agreement between the parties to partition, the assessor was correct in reappraising the property for 1980-81.

The basic approach that we take to this type of problem is to hypothesize that after that March 5, 1979, transfer the parties had a disagreement resulting in a court case to determine their respective ownership rights in the property. Generally speaking, the courts are reluctant to interpret a deed as other than a conveyance of property unless the evidence is clear that the intent of the parties was other than appears on the surface. In a case, such as this, where there is an executory written partition agreement as breach thereof gives the other party the right either: (1) to treat it as rescinded and bring an action for partition of the land, or (2) treat it as existing and bring an action for specific performance (48 Cal Jur 3d, Partition §10.) It is our opinion that evidence can be produced that would demonstrate that B _____ had the right to receive title to APN _____, thereby effecting a fully executed partition, in which case the proportional interests of B _____ and M _____ would be unchanged and Section 62(a) would be applicable. We further believe that denying the benefit of the exclusion to a fully executed partition covering more than one assessment year would both defeat the intent of the parties and frustrate the meaning of the statute.

Very truly yours,

Margaret S. Shedd
Tax Counsel

MSS:jlh