



Memorandum

To : Mr. Verne Walton

Date : May 9, 1986

From : Michele F. Hicks

Subject: Change in Ownership - Partition

This is in response to your memorandum dated March 4, 1986, requesting that we review the materials submitted by Monterey County to determine whether a series of transfers among co-owners resulted in a partition of the subject property.

The property is a 14.24 acre tract which was purchased from its owners in 1964 by four married couples who each held an undivided one-fourth interest in the property. Throughout the years, there were several transfers of the various undivided interests until on July 9, 1978, the ownership interests were held one-half by Mr. and Mrs. Roberts, one-fourth by Mr. and Mrs. Savo, and one-fourth by the Zen Center.

On December 3, 1982, the property was subdivided into four parcels. On May 15, 1984, all parties granted their respective interests in parcels 1 and 2 to Mr. and Mrs. Roberts. Also on May 15, 1984, all parties granted their interests in parcel 3 to Mr. and Mrs. Savo, and their interests in parcel 4 to the Zen Center. The assessor has reappraised 50 percent of parcels 1 and 2 because of the respective one-fourth interests transferred to Mr. and Mrs. Roberts by Mr. and Mrs. Savo and the Zen Center. Seventy-five percent of parcel 3 was reappraised because of the one-half interest transferred to Mr. and Mrs. Savo by Mr. and Mrs. Roberts and the one-fourth interest transferred by the Zen Center. Finally, 75 percent of parcel 4 was reappraised because of the one-half interest transferred to the Zen Center by Mr. and Mrs. Roberts and the one-fourth interest transferred by Mr. and Mrs. Savo.

In their respective applications for changed assessment, Mr. and Mrs. Roberts and Mr. and Mrs. Savo state that the change in the method of holding title to the property was merely a clarification of the existing situation. They state that when they bought their respective undivided one-fourth shares of the property in 1966, they and the two other couples who originally bought the property, signed an agreement which stipulated that in the future the property would be surveyed so that each couple would own their own separate parcel. They have attached a copy of that agreement, signed by the original

co-owners, to their application. Each couple bore financial responsibility for their own parcel. Property taxes were not divided equally four ways, but were pro-rated according to the values of additions to each property as determined by the assessor. When the health department required that Mr. and Mrs. Roberts put a septic tank on each of their two parcels, the expense was theirs alone. In April 1976, the land was surveyed according to the parties' long standing agreement. According to the application, the survey shows four separate parcels and was recorded on May 20, 1976 in Book 11 of Maps at page 123.

The issues to be decided are: (1) whether the transfers were a partition under Revenue and Taxation Code section 62(a)(1) or whether they were transfers of interests held as tenants in common under Revenue and Taxation Code section 61(e); and, (2) if the transfers were a partition, whether the partition was proportional to the undivided interest held by the co-owners.

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

Any transfer between co-owners which results in a change in the method of holding title to the real property transferred without changing the proportional interests of the co-owners in that real property, such as a partition of a tenancy in common.

The first question raised by the assessor about this transaction concerns the appraisal unit. Before the subdivision in 1982, the appraiser considered the entire 14-acre parcel to be one appraisal unit. After the subdivision, at the time of the transfers in 1985, the appraiser considered the appraisal unit to be the four individual lots.

In Letter to Assessors No. 80/84, May 16, 1980, we discussed the application of section 62(a) to each appraisal unit. We stated:

Although there are no statutory limitations placed upon the location or extent of the property involved in the transfer, it is our position that Section 62(a) should be applied separately to each appraisal unit. For example, the splitting of jointly held interests in two separate and distinct properties would require the comparison of the

proportional interests held before and after the transfer in each separate property.

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Example #1

Persons "A" and "B" are co-owners of a farm consisting of ten parcels. "A" and "B" are equal tenants in common (1/2 undivided interest each). The appraisal unit is determined to be the entire farm and the base year value of the appraisal unit is \$300,000 (each owner has 1/2 interest valued at \$150,000). A transfer is then implemented granting person "A" severalty ownership of six parcels and person "B" severalty ownership of four parcels. The interests held by each owner must be appraised to determine if either interest has changed proportionally in value. If "B's" new holding has a current market value of \$400,000 and "A's" new holding has a current market value of \$600,000, there has been a change in ownership of a 10 percent interest (i.e., "A" now holds 60 percent and "B" holds 40 percent). "B's" base year value must be reduced since he now owns less than he did prior to the transfer. His new value would be \$120,000 ($\$300,000 \times .40$). "A's" value must be increased. His \$150,000 base value would remain intact, but the 10 percent interest transferred (he owned 50 percent originally and now owns 60 percent) would be added to the \$150,000. His new base would be $\$150,000 + \$100,000$ (10 percent of the new total market value of \$1,000,000) or \$250,000.

Example #2

Persons "A" and "B" own 1/2 undivided interest each in two single-family residential vacant lots. The lots are the same size and have the same value (\$5,000 base and \$10,000 current market). A transfer is implemented to give "A" and "B" severalty (single) ownership of one lot each. If each lot is determined to be a separate appraisal unit, this would be a change in ownership transaction. Each owner had an undivided 1/2 interest in a given appraisal unit. Each ended up with severalty ownership of the entire unit thereby gaining a 1/2 interest in the unit. A reappraisal of the 1/2 interest transferred would be in order. The new base value

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of each lot would be \$2,500 (1/2 the old base) + \$5,000 (1/2 of the market value of \$10,000) or \$7,500. For the Section 62(a) exclusion to apply, each co-owner would have to receive 1/2 of each lot by way of a lot split, thereby receiving 1/2 of the appraisal unit.

Because after the subdivision, the appraiser considered the four parcels to be four different appraisal units, the assessor reappraised each parcel according to example 2. However, there is a distinction between the present case and the case in example 2. In the present case, the parcels had been, prior to a recent subdivision, one appraisal unit. But for the prior subdivision, there would have been no reappraisal. However, it was necessary for the owners to subdivide before they could partition. If the owners had not complied with the subdivision statutes prior to partition, the owners may be (1) guilty of a misdemeanor (Gov. Code § 66499.31), (2) subject to a restraining order or injunction (Gov. Code § 66499.33), and (3) denied all permits and approvals required to develop the property (Gov. Code § 66499.34; see 64 Cal.Ops.Atty.Gen. 762, 769 (1981)). Thus, the subdivision was merely a necessary step in the process of partitioning the property in accordance with the original agreement of the parties. Therefore, we believe that the present case should be characterized in the same manner as the farm which contains ten parcels in example 1. It should not be treated differently just because there was a subdivision, required by law, prior to the partition. A partition is a division of property giving separate title to those who previously held undivided interests. (C.C.P. §§ 872.810-872.840.) The May 15, 1984 transfers divided ownership and title to the four contiguous parcels among the owners in consideration for each other's mutual transfer. They resulted, therefore, in a partition of property previously held in undivided interests.

The next question to be considered is whether the transfers were proportional to ownership. The assessor has appraised the value of the four parcels for May 15, 1984 as follows:

	<u>AP# 1</u>	<u>AP#2</u>	<u>AP#3</u>	<u>AP#4</u>
Land	25,000	25,000	25,000	25,000
Imps	6,765	9,804	7,102	96,329

Mr. and Mrs. Roberts received parcels 1 and 2 in exchange for their one-half interest. Mr. and Mrs. Savo received parcel 3 in exchange for their one-fourth interest. The

Zen Center received parcel 4 in exchange for its one-fourth interest. The parcels were valued equally by the assessor. Therefore, as to land, the partition was proportional.

The next issue concerns the value of the improvements. In their applications for changed assessment, the parties state that each owner bore the expense for improving his individual parcel. In court actions for partition, Code of Civil Procedure section 873.220 makes the following provision for allotment of improvements made by a party or that party's predecessor in interest:

§873.220. Allotment of improvements

As far as practical, and to the extent it can be done without material injury to the rights of the other parties, the property shall be so divided as to allot to a party any portion that embraces improvements made by that party or that party's predecessor in interest. In such division and allotment, the value of such improvements shall be excluded. (Emphasis added.)

Thus, a court is mandated by statute to exclude the value of improvements made by a party in determining a partition equal to the value of his ownership interest. This procedure is consistent with the change in ownership concept. If a party improved a parcel at his own expense, there is no change in beneficial ownership when he is allowed to retain that improvement in a partition. Therefore, to the extent that the parties improved their parcels at their own expense, that value should be excluded from the value of their partitioned interest in determining proportionality.

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

MFH:cb

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson