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July 21, 1987

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Division of Assessment Standards
SACRAMENTO

Honorable E. Dan O'Connell
Colusa County Assessor
County of Colusa
547 Market Street
Colusa, CA 95932

Attention Kathy Griffin, Appraiser III

Dear Mr. O'Connell:

This letter is in response to your letter to Mr. J. K. McManigal dated June 10, 1987 in which you request our opinion whether a change in ownership requiring reappraisal occurred as a result of the following transaction.

Matthew conveyed an undivided one-third interest in a parcel of rice land of 28.65 acres to his brother Stephen and his wife in exchange for the simultaneous conveyance to him of an undivided 6.452 percent interest in a parcel of rice land of 148 acres by Stephen and his wife. The taxpayers contend there should be no reappraisal because each conveyance amounted to 9.55 acres.

Revenue and Taxation Code* section 61 provides in relevant part that:

"[e]xcept as otherwise provided in Section 62, change in ownership, as defined in Section 60, includes, but is not limited to:

* * *

"(e) [t]he creation, transfer, or termination of any tenancy-in-common interest, except as provided in subdivision (a) of Section 62 and in Section 63."

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

Section 63 deals with interspousal transfers and is inapplicable here. Section 62(a) provides in relevant part that "[c]hange in ownership shall not include:

"(1) [a]ny 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 courts have described a partition of a tenancy in common as follows:

"In a partition, there is no change of title between tenants in common . . . it is simply dividing up of what the parties already own. After the partition each tenant in common has exactly the same proportional interest in the property that he had prior thereto. The only difference is that now his interest is in severalty, while prior to the partition it was in common." (Rancho Santa Margarita v. Vail (1938) 11 Cal.2d 501, 539.)

Partition may be accomplished voluntarily by each particular co-owner receiving from all the others a conveyance of his undivided share in the particular parcel intended to be allotted to him. (Christy v. Spring Valley Water Works (1885) 68 Cal. 73.) Partition may also be partial. (Baldwin v. Foster (1910) 157 Cal. 643.) For property tax purposes, where a partition involves more than one parcel or property, a determination must be made whether or not the parcels are part of or constitute a single appraisal unit. (See Letter to Assessors 80/84 dated May 16, 1980 a copy of which is enclosed for your easy reference. See also Assessors Handbook 501, page 11, for a discussion of the appraisal unit.)

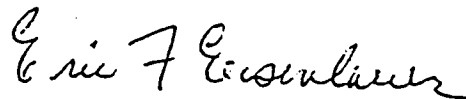
Based on the foregoing, if the parties to the transfers in question were co-owners of both parcels prior to the transfers and you find that both parcels comprise a single appraisal unit or are part of a single appraisal unit and that the proportionate interests of the parties in the appraisal unit remained the same within the guidelines of LTA 80/84 from a value standpoint, then it is our opinion that section 62(a)(1) is applicable to exclude the transfers from change in ownership.

If you find, however, that the parties to the transaction were not co-owners of both parcels prior to the transaction or that the two parcels are separate appraisal units, then section

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62(a)(1) is not applicable and the interests transferred must be reappraised. If you have any further questions, regarding this matter, please let us know.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

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Enclosure