STATE OF CALIFORNIA

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April 17, 2009

Mr.
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County of Santa Cruz
Office of the County Counsel
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Re: Partitions -- Revenue and Taxation Code Section 61, Subdivision (f) and Section 62, Subdivision (a)(1)
Assignment No. 08-133

Dear Mr. :

This is in response to your letter regarding the application of Revenue and Taxation Code section[1] 61, subdivision (f) (section 61(f)) and section 62, subdivision (a)(1) (section 62(a)(1)), the partition exclusion, to a partition of two adjacent single-family residential parcels held jointly in tenancy in common that resulted in one parcel being owned by one former tenant in common and the other parcel being owned by the other former tenants in common.

We understand that each parcel has a separate Assessor's Parcel Number (APN) and that the Santa Cruz County Assessor (the Assessor) determined that each parcel was a single appraisal unit. Consistent with guidance issued by the Board of Equalization (BOE), the Assessor reassessed the one-half interests transferred in each single-family residential parcel. We further understand that subsequently one of the former tenants in common filed a claim for refund (Refund Claim) with the Santa Cruz County Board of Supervisors (the Board), arguing that the BOE's interpretation of section 62(a)(1) is incorrect. Therefore, you seek the BOE's opinion to guide the Board in its consideration of the Refund Claim and whether the above transaction should have resulted in reassessment of a one-half interest in each parcel.

As explained below, a partition by tenants in common of two jointly owned adjacent parcels, considered to be two separate appraisal units, which results in one former tenant in common receiving one parcel and the other former tenants in common receiving the other parcel, requires reassessment of a one-half interest in each parcel pursuant to section 61(f). The section 62(a)(1) partition exclusion does not apply to such transactions.

[1] All further section references are to the Revenue and Taxation Code unless otherwise indicated.

Factual Background

In rendering this opinion, we reviewed the original deed and the Refund Claim filed by the taxpayer, as well as the Claimant's legal arguments in support of the Refund Claim. In addition, we reviewed a brief filed by the Assessor's office in a prior, dismissed court proceeding, involving this taxpayer.

The facts as we understand them are as follows. E (Claimant) and H W and C W , Trustees UDT dated , 1993 (the W) held as tenants in common two adjacent single-family residential parcels located in Santa Cruz County. The first parcel is known as Assessor's Parcel No. xx-xxx-10 (Lot 10) and the second parcel is known as Assessor's Parcel No. xx-xxx-11 (Lot 11).[2] Pursuant to a partition action filed in the Superior Court of Santa Cruz (Case No. CV ------), the Claimant and the W entered into a stipulated judgment whereby it was agreed that the parties would transfer one-half interests in each parcel so that Lot 10 would be owned by the W in its entirety and Lot 11 would be owned by the Claimant in its entirety. The reappraisal of Lot 11, however, is the only issue in this action.

Applicable Law

Article XIII A, section 2 of the California Constitution requires the reassessment of real property upon a "change in ownership." A change in ownership is defined in section 60 as "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."

Section 61(f) provides that a change in ownership includes "the creation, transfer, or termination of any tenancy-in-common interest, except as provided in subdivision (a) of Section 62 and in Section 63."[3]

Section 62(a)(1) excludes from the definition of change in ownership:

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

Property Tax Rule[4] 462.020, subdivision (a) provides that "the creation, transfer, or termination of a tenancy in common interest is a change in ownership of the undivided interest transferred." However, Rule 462.020, subdivision (b)(1)(A) provides an exclusion for transfers between or among co-owners that results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as a partition.

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[2] There was also a five-foot strip of land between the two adjacent parcels; however, the disposition of the strip of land does not affect our analysis.

[3] Section 63 provides an exclusion from the definition of change in ownership for interspousal transfers, which is not applicable here.

[4] All subsequent references to "Rule(s)" are to the Property Tax Rules promulgated under title 18 of the California Code of Regulations.

The term "real property" in section 62(a)(1) and Rule 462.020 is not defined. In both LTA[5] No. 80/84 and Annotation No. 220.0468, the BOE has opined that section 62(a)(1) should be applied separately to each appraisal unit and that 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.

In this regard, LTA No. 80/84 provides that:

> 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 a farm containing ten parcels would not be a change in ownership if the proportional interests remained the same. *However, 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*.
>
> Historically, assessors value property on the basis of the "appraisal unit." That unit is defined in Assessors' Handbook Section 501 as "the unit most likely to be sold as indicated by the analysis of market data." We feel that using the "appraisal unit" basis in regard to Section 62(a) transfers is not only consistent with appraisal practice but also the most practical approach from an administrative standpoint.
>
> [¶]…[¶]
>
> Example #2: Persons "A" and "B" own l/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 l/2 interest in a given appraisal unit. Each ended up with severalty ownership of the entire unit thereby gaining a l/2 interest in the unit. A reappraisal of the l/2 interest transferred would be in order. The new base value of each lot would be $2,500 (l/2 the old base) + $5,000 (l/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 l/2 of each lot by way of a lot split, thereby receiving l/2 of the appraisal unit. (Emphasis added.)

Consistent with LTA 80/84, Annotation 220.0468 provides:

> 220.0468 **Partition.** If the parties to the transfers of two parcels were co-owners of both parcels prior to the transfers, and if it is found that both parcels are part of

[5] LTAs present Board staff's interpretation of rules, laws, and court decisions on property tax assessment. They include summaries of court rulings, legal opinions, highlights of enacted legislation, property tax rules, and technical bulletins for assessment problems. LTAs represent Board staff's advice as of the date each letter is issued. These, letters, however, are strictly advisory and it is the assessor who ultimately determines the facts of a controversy and whether or not a specific area of law applies. Accordingly, the opinions and advice contained in these letters have no binding legal effect on assessors and others and are not binding authority.

> a single appraisal unit and that the proportionate interests of the parties in the appraisal unit remained the same from a value standpoint after the transfers, Revenue and Taxation Code section 62(a)(1) is applicable to exclude the transfers from change in ownership.
>
> If the parties to the transfers were not co-owners of both parcels prior to the transfers, or *if the two parcels are separate appraisal units, Revenue and Taxation Code section 62(a)(1) is not applicable, and the interests transferred must be reappraised*. C 7/21/87. (Emphasis added.)

As stated in LTA 80/84, above, Section 501 of the Assessors' Handbook defines the appraisal unit as "the unit most likely to be sold as indicated by the analysis of market data." The Assessors' Handbook explains further:

> In most cases the identification of the appraisal unit is obvious and causes few or no problems. Since the objective of the appraisal is to determine the market value of the property, the market also provides the appraisal unit. The proper unit to be valued is the unit that people in the market typically buy and sell. For example, single family homes are sold as a combination of land and buildings. Buyers and sellers do not negotiate separate prices for the land and the buildings but negotiate a price for the combination of the land and buildings. The combination of land and buildings, therefore, comprises the appraisal unit, and the appraisal of this type of property must reflect the value for this unit.
>
> In some cases though, the identification of the appraisal unit may not be as easily discernible as with single family homes. For example, unimproved residential subdivision lots may be sold individually or in groups. Also, a farm property may consist of several parcels that could be sold separately or as a single farm unit. In these cases, the appraiser must use judgment to determine the proper unit. Decisions should be based on consideration of ownership, use, location, and, most importantly, highest and best use. These decisions must reflect, as faithfully as possible, the unit most likely to be sold if the property were exposed to the open market.

With respect to single-family residential parcels, as at issue here, these types of properties are usually considered to be single appraisal units since they are normally bought and sold separately in the market place. Furthermore, parcels that have their own APN numbers, as the Claimant's and the W 's, are also normally treated as separate appraisal units since assessors generally assign separate parcel numbers to separate appraisal units and normally would not assign separate parcels numbers to a single appraisal unit except under some limited circumstances not relevant here.

Analysis

I. The Partition at Issue Does Not Meet the Requirements of Section 62(a)(1).

In this case, prior to the partition, the Claimant owned an undivided tenant in common interest in two separate and distinct single-family residential parcels, each having its own APN number. Prior to the partition, the Claimant owned a 50 percent interest in both parcels (Lots 10 and 11), after the partition, she owned a 100 percent interest in Lot 11 and no interest in Lot 10. This is not the same proportional interest that the Claimant had in the properties prior to the partition. For that reason, pursuant to section 62(a)(1) and the guidance cited above, issued by the BOE, the transfers do not qualify as a partition within the meaning of section 62(a)(1). Accordingly, such transfers of interests in real property are subject to reassessment.

II. Case Law Does Not Support Claimant's Interpretation of Section 62(a)(1).

The Claimant argues in the Refund Claim that partitions of multiple appraisal units, which Claimant refers to as "multiple properties," held jointly in tenancy in common that result in one parcel being owned by one of the former tenants in common and the other parcel being owned by the other former tenants in common should qualify for exclusion from change in ownership under section 62(a)(1). The Claimant argues with respect to all partitions, whether the partitioned property consists of single or multiple appraisal units, that "a partition of a tenancy in common lacks 'a transfer of a present interest in real property.'" The Claimant insists that she and the W merely exchanged property and that no interests in real property were transferred between them. Notwithstanding the fact that an exchange of property is a transfer of real property, she quotes several cases in support of her contentions. However, as explained herein, those cases do not support her claims.

First, the Claimant cites *Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 538 to support her claim that there is no transfer of a present interest when any tenancy in common is partitioned. In *Rancho Santa Margarita*, the court held that: "(i)n a partition, there is no change of title between the tenants in common – it is simply a dividing up of what the parties already own." Based upon this language, the Claimant argues that: "if there is no change of title and a mere division of what is already owned, there could be no 'transfer of a present interest.'"

The Claimant asserts that the court in *Rancho Santa Margarita* was addressing partitions of multiple parcels of land. However, this is not true. At page 552, the *Rancho Santa Margarita* court states:

> We next turn our attention to Little Temecula grant. Admittedly, ***this entire Mexican grant*** was originally riparian to the Temecula-Santa Margarita River. Thereafter, the rancho passed from the original patentee in successive transfers and conveyances ***as a single tract***. In 1892 the grant was owned by 6 people as tenants in common. In that year, pursuant to a decree of partition, the grant was partitioned into 6 parcels labeled parcels A, B, C, D, E and F, one parcel being allocated to each of the tenants in common.[6] (Emphasis added.)

[6] *Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 552.

Here, Claimant's partition action for a one-half interest in Lot 11 is not "simply a dividing up of what she already owned." The Claimant did not previously own the W 's one-half interest in Lot 11 but obtained it by way of exchange. That is, prior to the partition, Claimant owned only a 50 percent interest in Lot 11, but after the partition, she owned a 100 percent interest in that lot. Thus, she gained a 50 percent interest in Lot 11 that she did not previously own.

The Claimant also cites *Wade v. Deray, et al.* (1875) 50 Cal. 376 for the proposition that a judgment in partition "has no other effect than to sever the unity of possession, and does not vest in either of the co-tenants any new or additional title." The court stated: "It is certain that neither of the co-tenants intended to convey to the others any portion of his own interest in the land, and that the sole object of all was only to sever the unity of possession, nothing more."[7]

Claimant states that *Wade* is precisely applicable to the situation between her and the W , stating that "each owned half of the Partitioned Property and each got half of the property but in severalty and not jointly. This was effected (sic) by simply splitting the ownership and not by conveyance or transfer by one tenant in common of any portion of that tenant's interest in the land to the other." Again, however, Claimant fails to recognize that the partition in *Wade* involved one tract or grant of land with multiple owners by tenancy in common, and is, thus, inapplicable.

In her citation to these cases, it appears that Claimant misconstrues the nature of a partition. In *14859 Moorpark Homeowner's Association et al., v. VRT Corporation et al.* (1998) 63 Cal.App.4th 1396, the California Court of Appeal described a partition as:

> … 'the procedure for segregating and terminating common interests ***in the same parcel*** of property.' (5 Miller & Starr, Cal. Real Estate (2d ed. 1989) Holding Title, § 12:13, p. 121; see Noble v. Beach (1942) 21 Cal.2d 91, 95 [130 P.2d 426]…)[8] (Emphasis added.)

A partition is not an exchange of multiple parcels commonly owned but is a splitting of single parcels commonly owned. In *Bennet v. Potter* (1919) 180 Cal. 736, the California Supreme Court stated it this way:

> A simple partition does not change the title, nor transfer it from one to the other, nor return or restore to either party anything lost by him, or of which he had been deprived. It merely transforms the right of common possession *of the whole tract* into a right to the exclusive possession of *the same interest or share*, as represented by the parcel set off to him in severalty. He thereafter holds in severalty that interest which he previously held in undivided form.[9] (Emphasis added.)

As stated above, however, in the Claimant's situation, there is more than one parcel at issue. Indeed, there are two parcels; and to effectuate a partition where one tenant in common

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[7] *Wade v. Deray, et al.* (1875) 50 Cal. 376, 380.
[8] *14859 Moorpark Homeowner's Association et al., v. VRT Corporation et al.* (1998) 63 Cal. App. 4th 1396, 1404-1405.
[9] *Bennet v. Potter* (1919) 180 Cal. 736, 742.

receives an entire parcel and the other tenant receives the other entire parcel, there must be a corresponding transfer by each tenant in common one-half of his or her interest in each parcel.

While the cases cited by Claimant are not helpful to her cause, *Noble et al. v. Beach* (1942) 21 Cal.2d 91 speaks directly to this issue. In that case, the California Supreme Court addresses a factual scenario similar to the one at issue. In *Noble*, the Court considered whether a partition, where the tenants in common exchanged interests in multiple separate and distinct properties[10] that they co-owned so that each tenant in common owned an entire separate parcel, resulted in the transfer of any interest or change in title. In deciding whether "[t]he broad doctrine that partition does not create or convey a new or additional title or interest but merely severs the unity of possession" applies to this type of partition (where multiple separate and distinct properties are involved), the court stated, to the contrary:

> Considerations of policy must, however, determine the application of the doctrine [quoted above]. It will not be mechanically applied to confer upon the execution sale purchaser of a cotenant's undivided interest in specific property any additional interest in that property subsequently allotted the former owner on partition in place of his undivided interest in another parcel. Because the original grant to a cotenant embraces an undivided interest in and title to the entire tract or estate, a partition deed or decree technically does not confer upon him a new title or interest. *Practically it does, however, as the present case illustrates, for before the partition Wiren could convey only an undivided one-third interest in the Alameda property, but thereafter he was able to convey the entire property. He had the power to make that conveyance because he acquired by partition that which he did not previously have*. (See Tiffany, Real Property, 3d ed., vol. 2, p. 470.)[11] (Emphasis added.)

Thus, where multiple separate and distinct properties are involved in the same partition action (in *Bennett v. Potter*, properties in Alameda and San Francisco counties), and the result of the action is that ownership of each separate and distinct property is isolated in one of the previous joint owners, then the portion of property in excess of one's previous undivided share is a new title or interest obtained as a result of the partition action.

The same applies here. Before the partition, Claimant could only convey one-half interest in Lot 11; now, after the partition, she can convey the entire property. Thus, she has acquired by partition that which she did not previously have. Accordingly, a transfer of an interest in the property had occurred and reassessment of that interest transferred is appropriate.

III. The Claimant's Additional Arguments Are Flawed and Do Not Support A Reversal of the BOE's Interpretation.

Claimant states that since "there are no statutory limitations placed upon the location or extent of the property involved in the transfer," as quoted in LTA 80/84, then all types of partitions between tenants in common should be covered under section 62(a)(1). However, such a reading of section 62(a)(1) would render section 61(f), which provides that a change in

[10] The properties were parcels located in Alameda and San Francisco counties.
[11] *Noble et al. v. Beach* (1942) 21 Cal.2d 91, 95.

ownership includes "the creation, transfer, or termination of any tenancy-in-common interest…," meaningless. Under Claimant's interpretation, transfers or terminations of tenancy-in-common interests would never result in a change in ownership so long as the parties called these transactions partitions. However, as shown in *Noble*, above, where two individuals exchange interests in separate parcels previously co-owned, such exchanges *even under a partition action* would result in a transfer of interest in those properties because they are not proportionate to the interests held in the properties prior to the partition as required under section 62(a)(1).

The Claimant also asserts that the term "real property" contained in section 62(a)(1) refers to "all of the property transferred between co-owners resulting in a change in the method of holding title to the property." However, the Claimant cites no authority for this proposition.

Finally, Claimant states that the BOE's interpretation "flies in the face of … public policy related to partition actions." The Claimant states that "the law favors partition in kind," quoting *Richmond v. Dofflemeyer* (1980) 105 Cal.App.3d 745, 757. Claimant misapplies this case's holding and wrongly contends that the BOE's interpretation of section 62(a)(1) somehow disfavors partitions. This is not the case. *Richmond* has nothing to do with the administration of property taxes or whether the administration of property taxes should or should not "favor" partitions. It merely stands for the proposition that a partition is favored over an order for the sale of a property in a partition action. Even so, and notwithstanding, the BOE's interpretation of section 62(a)(1) does not disfavor partitions. However, the transaction completed by the Claimant is not a true partition *in kind* as defined by the courts above. It was not the simple dividing of one parcel, and the Claimant did not obtain the same proportion of property that she once owned. This type of division is not eligible for exclusion under section 62(a)(1).

Conclusion

As stated above, it is our opinion that the BOE's long-standing interpretation of section 62(a)(1) is correct. Furthermore, the Legislature has amended this code section over ten times since the issuance of the BOE's 1980 LTA and 1987 Annotation but has not changed the wording to reflect any disagreements it may have with the BOE's interpretation of section 62(a)(1). In that regard, we note that an administrative construction of a statute may be approved and confirmed by subsequent legislation. Lawmakers are presumed to be aware of long-standing administrative practice. Thus, reenactment of a provision, or the failure to substantially modify a provision, is a strong indication that the administrative practice was consistent with underlying legislative intent and an implied adoption of that practice.[12]

Accordingly, it is our opinion that the section 62(a)(1) partition exclusion does not apply to the above-described transaction and that it was appropriate for the assessor to reassess a one-half interest in each parcel.

[12] See *Whitcomb Hotel v. California Employment Commission* (1944) 24 Cal.2d 753.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Dennise L. Riley

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DLR/cme
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