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May 4, 2007

Re: Change in Ownership – Rebutting the Deed Presumption

Dear Mrs. :

This is in response to your February 7, 2007 e-mail correspondence addressed to Chief Counsel Kristine Cazadd requesting advice concerning a supplemental assessment issued by the County Assessor (assessor). Pursuant to our conversation on March 20, 2007, you request a formal opinion in lieu of an e-mail response.

You ask whether the former co-tenants' transfer of 50 percent interest in the property to you and your husband resulted in a change in ownership. For the reasons set forth below, we conclude that the transfer resulted in a change in ownership of 50 percent of the property pursuant to Revenue and Taxation Code¹ section 61, subdivision (f). However, you may present evidence to the assessor to rebut the deed presumption to show that the property was owned by a partnership rather than as tenants in common. If the assessor is satisfied that you have presented clear and convincing evidence demonstrating that the property was beneficially owned by the remaining partner of that partnership, then the transfer of 50 percent interest in that partnership to you and your husband would not result in a change in ownership and subsequent reassessment pursuant to section 64, subdivision (c)(1).

Factual Background

You provided the following facts for purposes of our analysis:

Title to the property shows that, from June of 1993 through October 17, 2006, you and your husband were two of four co-owners of the property, held as tenants in common, with each co-owner holding a 25-percent ownership interest.

¹ All section references are to the Revenue and Taxation Code unless otherwise specified.

On October 17, 2006, two of the co-owners transferred their interest to you and your husband, resulting in you and your husband each holding a 50 percent ownership interest in the property as tenants in common. As a result of this transfer, the assessor issued a supplemental property tax assessment.

However, it is your contention that the property was owned by a partnership and that on October 17, 2006, 50 percent of the partnership interest was transferred to you and your husband, the remaining partners. You state that the partnership had one joint checking account for all property-related expenses and affidavits from an accountant and the former partners will attest to the existence of the partnership.

Law and Analysis

1. **Tenancy in Common**

The creation, transfer, or termination of a tenancy in common interest is a change in ownership of the undivided interest transferred. (Rev. & Tax. Code, § 61, subd. (f), and Property Tax Rule 462.020, subd. (a).) If an interest in a portion of the property is transferred, only the portion of the real property represented by the interest changing ownership is reappraised. (Rev. & Tax. Code, § 65.1, subd. (a).)

In this case; based on the recorded deeds, we conclude that the former co-tenants' transfer of their combined 50 percent real property interests to you and your husband on October 17, 2006, resulted in a change in ownership of 50 percent of the property. Thus, the assessor properly issued the supplemental assessment for the 50 percent change in ownership.

2. **Rebutting the Deed Presumption**

Evidence Code section 662 provides that, "The owner of the legal title is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof." The courts define clear and convincing proof as evidence "so clear as to leave no substantial doubt in the mind to the trier of fact," and as evidence "sufficiently strong to command the unhesitating assent of every reasonable mind." (See *Tannehill v. Finch* (1986) 188 Cal.App.3d 224, 228; see also *Lillian F. v. Superior Court* (1984) 160 Cal.App.3rd 314, 320.)

Property Tax Rule 462.200, subdivision (b), interprets and makes specific Evidence Code section 662. Subdivision (b) states that when more than one person's name appears on a deed, there is a rebuttable presumption that all persons listed on the deed have ownership interests in that property. Paragraphs (1) and (2) in subdivision (b) list the types of evidence necessary to overcome this presumption:

- (1) The existence of a written document executed prior to or at the time of the conveyance in which all parties agree that one or more of the parties do not have equitable ownership interests.
- (2) The monetary contribution of each party. The best evidence of the existence of any factor shall be an adjudication of the existence of the factor reflected in a

final judicial finding, order, or judgment. Proof may also be made by declarations under penalty of perjury (or affidavits) accompanied by such written evidence as may reasonably be available, such as written agreements, canceled checks, insurance policies, and tax returns.

In this case however, if the property was owned by a partnership, rather than as tenants in common, you may present evidence to the assessor to rebut the deed presumption. In addition to evidence of the use of a joint checking account for property-related expenses and affidavits from your accountant and former alleged partners, you should provide the assessor with other evidence of the existence of the partnership such as partnership tax returns. The evidence should show the percentage of ownership interest of each partner in the partnership's capital and profits.

Further, in determining whether a partnership is formed, the intention of the parties is the ultimate test. (See 9 Witkin, Summary of Cal. Law (10th ed. 2005) Partnership, § 25, p. 600.) The parties need not designate their relationship as a partnership. The intent of the parties can be deduced from the partnership agreement as well as the surrounding circumstances.

Here, since a formal partnership agreement did not exist, the intent to form a partnership must be demonstrated by evidence such as the alleged partners' conduct, transactions, and declarations such as use of a joint checking account and affidavits in support thereof as well as other evidence ad discussed above. Thus, if the assessor is satisfied that the evidence you present, taken together, provides clear and convincing evidence that the four named tenants in common were partners, the assessor may find that the property was beneficially owned by the partnership.

We note that transfers of interests in legal entities that own real property generally do not constitute transfers of the real property owned by the legal entity. (Rev. & Tax. Code, § 64, subd. (a).) However, a transfer of legal entity interests that results in a change in control of the legal entity results in a change in ownership of all of the property owned by the legal entity. (Rev. & Tax. Code, § 64, subd. (c)(1).) Property Tax Rule 462.180, subdivision (d)(1), defines "control" for change in control purposes under section 64, subdivision (c)(1). That rule states that a person has obtained "control" of a partnership when that person or legal entity has obtained more than a 50 percent interest in partnership capital and more than 50 percent interest in partnership profits.

Thus, if the assessor were to find that the property was in fact held by a partnership and on October 17, 2006, the former partners transferred their 50 percent partnership interest to you and your husband as remaining partners of that partnership, which continued to exist, then neither you nor your husband hold more than a 50 percent interest in partnership capital and profits. Therefore, the disassociation of the two partners would not result in a change in ownership and subsequent reassessment. (Property Tax Rule 462.180, subd. (d)(1).) Again, this conclusion is solely based upon the fact that the assessor is satisfied that the evidence which you present, taken together, provides clear and convincing evidence that the property was beneficially owned by the partnership, and there was a transfer of partnership interest which did not result in a change of control.

The views expressed in this correspondence 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,



Travis S. Fullwood
Legal Analyst

/s/ Sophia Chung

Sophia Chung
Tax Counsel IV

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cc: Honorable
County Assessor

Mr. David Gau	MIC:63
Mr. Dean Kinnee	MIC:64
Mr. Todd Gilman	MIC:70