



State of California

Board of Equalization
Legal Division

Memorandum

To: Mr. Charles G. Knudsen

Date: July 24, 1995

From: Eric Eisenlauer *Eric Eisenlauer*

Subject: Possessory Interests: Month to Month Tenancy

This is in response to your memo of May 11, 1995 to Mr. Richard H. Ochsner in which you request that we review a brief prepared by the Santa Barbara County Counsel and confirm whether we agree or disagree with the conclusions contained in the brief.

In general, the brief concludes that the recommendations contained in the Board's 1987 and 1994 survey of Santa Barbara County concerning change in ownership of possessory interests and month to month tenancy is wrong and "without sufficient legal justification."

In the 1987 Survey, the Board stated in relevant part:

"...it is the Board's position that PI's (possessory interests) with month-to-month tenancies are subject to annual reevaluation....We recommend that the county assessor review all month-to-month PI's annually, revaluing those where any significant change in value has occurred."

In the 1994 Survey, the Board stated:

"The Santa Barbara County Assessor apparently does not subscribe to this doctrine. Unless there are new PI interest holders for the property in question, no change in ownership is recognized and no new appraisal is made. Instead, the "base year" of the PI is adjusted annually by the appropriate inflation factor even if a renewal of the PI has occurred. This is in direct conflict with that portion of Rule 462(e) that says a "renewal" of a PI is change in ownership. We recommend that the assessor's policy be changed to conform with the provisions of the property tax rule so that whenever a PI renewal

occurs, a change in ownership is processed. This should include month to month tenancies that should be recognized as change in ownership annually."

The Santa Barbara County Assessor eventually followed the foregoing recommendations with respect to boat slips used pursuant to slip permits issued by the City of Santa Barbara. The brief in question relates to assessment appeals resulting from the assessor's compliance with the quoted recommendations.

The brief correctly characterizes the interests created by the slip permits as month-to-month periodic tenancies which continue indefinitely unless terminated by either party on 30 days written notice. The brief also indicates that the reasonably anticipated term of possession used by the assessor for such tenancies was five years.

The brief recognizes that there must be a transfer of a present interest accomplished through the creation, renewal, extension, sublease or assignment of a possessory interest to have a change in ownership under Revenue and Taxation Code section 61, subdivision (b). The brief nevertheless concludes that since the interest terminates not at the end of each month but only on the happening of specified events (i.e., notice of termination by either party or violation of the agreement), there is no "transfer" of a present interest in real property and thus no change in ownership. This conclusion seems to be based on the erroneous assumption that there can be no renewal or extension of a month to month tenancy. The brief does not mention or discuss the effect of the Civil Code sections listed below.

Civil Code Section 1946 provides in part:

A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in Section 1945, at the end of the term implied by law unless one of the parties gives written notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding 30 days; provided, however, that as to tenancies from month to month either of the parties may terminate the same by giving at least 30 days' written notice thereof at any time and the rent shall be due and payable to and including the date of termination.

Civil Code Section 1945 provides:

If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year.

Under Civil Code Section 1946, a month-to-month tenancy "is 'deemed to be renewed' unless one of the parties gives written notice to the other of his intention to terminate the same, at least...30 days' before the expiration of the month, or either party to the month to month tenancy 'may terminate the same by giving at least 30 days' written notice thereof at any time and the rent shall be due and payable to and including the date of termination.' (Citations omitted.)" *Renner v. Huntington etc. Oil & Gas Co.* (1952) 39 Cal.2d 93, 102). See also *Palmer v. Zeis* (1944) 65 C.A.2d Supp. 859, 863 wherein the Court of Appeal held that "[t]he effect of a notice under section 1946, Civil Code, is, as stated therein, to prevent a renewal of the existing lease at the end of its term (implied by law), and this means that at the end of that term the lease expires by lapse of the time provided (by implication) for its duration." (Italics in original.)

From the foregoing, it seems clear that a taxable possessory interest consisting of a month to month tenancy in tax exempt real property is renewed each month that no notice to terminate is given.

Such a renewal would result in a change in ownership each month under Revenue and Taxation Code section 61(b) and Property Tax Rule 462.080. To the extent this conclusion is inconsistent with those reached in the brief, we disagree with those conclusions.

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