



(916) 445-3076

February 7, 1980

Mr. G :

Dear Mr. G :

You requested our thoughts on several questions concerning change in ownership in Sections 60-67 of the Revenue and Taxation Code. We are happy to comply with your request.

The first question concerned the meaning of the term "beneficial use" in Section 60. As you know, this section provides:

A "change in ownership" means 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. (Emphasis added.)

At the outset, there are two issues involving this phrase. The first is whether the term "including the beneficial use thereof" is a mandatory requirement to have a change in ownership or whether it is merely an example. In other words, can there be a change in ownership without transfer of the beneficial use? The answer to this question in the task force report of January 22, 1979, which has the following statement:

The task force concluded that a change in ownership is a transfer which has all three of the following characteristics:

1. It transfers a present interest in real property;
2. It transfers the beneficial use of the property; and

3. The property rights transferred are substantially equivalent in value to the fee interest.

We think this statement mandates the conclusion that the beneficial use must transfer to have a change in ownership and that, consequently, the beneficial use is a mandatory requirement.

The second issue becomes what the term "beneficial use" means. Beneficial use may mean two different things to different people. The layman might think of it as the actual use of the property. The lawyer might think of it as the ultimate right to use even if a person did not enjoy the actual use. For example, a lessor has the ultimate right to use the property, but he has contracted for a lessee to enjoy the actual use.

Black's Law Dictionary defines beneficial use in terms of the right to use and enjoy property as distinguished from a mere right of occupancy or actual use or possession. The question is whether the framers of Section 60 intended this definition to apply. In our opinion they did. This conclusion is borne out in the task force report example on page 39. A father purchases land for his minor son taking title as trustee for the son. Upon reaching majority the son takes title but there is no change in ownership at that time because there is no transfer of the beneficial use. In this example, the father had the actual use of the property and the son had the ultimate right to use.

Thus, our conclusion is that the beneficial use of the property that must transfer to have a change in ownership is the ultimate right to use and not necessarily the actual use and possession of the property. This analysis leads to the conclusion that in cases where title is split, one party could remain in actual possession of the property, but there could be a change in ownership if the ultimate right to use transfers from one person to another. It is not totally sufficient in proving change in ownership to show that one party had actual possession of the property throughout the period in question.

A second question you posed concerned the conversion of apartments to condominiums and whether such conversion was a change in ownership. We have held before that the filing of a subdivision map for division of land into lots was not, by itself, a change in ownership. The same principle applies to conversion of an apartment to a condominium, except that whether a reappraisal in the conversion situation depends on the facts of the actual situation. The conversion itself does not constitute a change in ownership, but under the right circumstances there may be a reappraisal when the conversion has been completed.

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If the property is a typical apartment house owned by an individual or corporation and rented to the same individuals who will purchase the condominium units it seems there would be a change in ownership for each unit as it goes from the owner of the apartment to the owner of the individual unit. If this same apartment house is converted and each unit leased or rented to the same tenants the reappraisal status would depend on the length of the lease agreement. Under Section 61(c) of the Revenue and Taxation Code there would be no change in ownership if the lease is 35 years or less and there would be a change in ownership if the lease was for more than 35 years.

If the project is a stock cooperative, there would be a change in ownership no matter who buys the units. The ownership would go from a corporation to either a shareholder or another person and this is covered by Section 61(i).

If the project is a community apartment project where each tenant owns an undivided interest in the entire project, there would be no change in ownership if the person(s) who purchased the condominium units are the same persons who rented the apartments. This exclusion would be under Section 62(a) of the Revenue and Taxation Code.

The third question you asked concerned the issue whether the purchase of assets by a revocable trust is a change in ownership. The purchase in your example was made some time after creation of the trust. It is our opinion that such a transfer is a change in ownership. While the literal language of Section 62(d) may be read to exclude such transaction, the intent as exemplified by the task force report is to limit Section 62(d) to transfers in trust made by the trustor. It refers to the creation of a trust rather than to subsequent purchases by the trustee of the trust. We are in the process of amending our rules to make this clear. The purchase by the trust is an obvious change in ownership under any definition given to the term, whereas it was unclear at the beginning whether a transfer into trust upon the creation of a revocable trust was, in fact, a change in ownership.

Very truly yours,

Robert D. Milam
Tax Counsel

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