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May 2, 2006

***Re: Change in Ownership – Deed Recording***

Dear Mr. \_\_\_\_\_ :

This in response to your December 8, 2005 fax to me, requesting our opinion as to whether the recording in 2006 of a Decree of Distribution by the Los Angeles Superior Court, dated December 23, 1969 (the 1969 Decree), to clear title to real property will be a change in ownership triggering a reassessment of that property. As explained below, the recording of the 1969 Decree does not constitute a change in ownership, and thus, will not trigger a reassessment of the real property.

**Factual Background**

In your fax, you state that in 1966, a parcel of real property located in Los Angeles County was owned 50 percent by a married man (Decedent) and 50 percent by his son. The Decedent died in 1966 and one-half of his 50 percent interest was probated in accordance with the terms of his will, as follows: 5 percent to spouse, 5 percent to son, 5 percent to daughter, and the remaining 10 percent to his three grandchildren. The 1969 Decree ordered a distribution of Decedent's 25 percent interest in those amounts. A certified copy of the distribution was issued by the court on January 15, 1970, but was not recorded in the County Recorder's Office. The Decedent's spouse retained her remaining 25 percent community property interest in the property. While you do not state in your fax, we assume that the wife's 25 percent interest in the property was recorded.

In 1975, Decedent's spouse died and her 30 percent interest in the property was distributed equally by another Decree of Distribution (the 1975 Decree) to the three grandchildren. This Decree of Distribution was recorded. Presently, the son, daughter, and the three grandchildren still own the property; however, since the 1969 Decree was not recorded, title still shows that Decedent, who died in 1966, is the owner of a 25 percent interest in the property.

**Legal Analysis**

Revenue and Taxation Code<sup>1</sup> section 60 defines a "change in ownership" 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." The date of a change in ownership when

<sup>1</sup> Unless otherwise specified, all further statutory references are to the Revenue and Taxation Code.

property is transferred by will or intestate succession is the date of death. (Property Tax Rule 462.260, subd. (c).) However, section 62, subdivision (b) provides that among the transfers specifically excluded as a change in ownership is "[a]ny transfer for the purpose of perfecting title to the property." A transfer for the purpose of perfecting title does not constitute a change in ownership of the real property because there is no transfer of the beneficial interest as required by section 60.

While the owner of the legal title to property is presumed to be the owner of the full beneficial interest, this presumption may be rebutted by clear and convincing proof. (Evid. Code, § 662.) Property Tax Rule 462.200, subdivision (b)(2) sets forth the types of documentary proof that may constitute clear and convincing evidence sufficient to rebut the presumption, and provides that the best evidence is established by "an adjudication of the existence of the factor reflected in a final judicial finding, order, or judgment." Other documents that may be presented as evidence include written documents such as tax returns, canceled checks, and insurance policies. (Property Tax Rule 462.200, subd. (b)(1).)

In your case, the transfer of Decedent's 25 percent interest is directly evidenced by the 1969 Decree. Any other evidence, listed above, showing that the spouse, children, and grandchildren were the beneficial owners of the Decedent's 25 percent interest in the property would further support this conclusion. If the assessor is satisfied that beneficial ownership of Decedent's 25 percent interest transferred in 1966 (the date of Decedent's death), any recording done to reflect that change would be merely to perfect legal title in the property. Instead, a change in ownership, if any, occurred in 1966 on the date of the Decedent's death. Thus, no change in ownership would occur as a result of recording the 1969 Decree for the purpose of perfecting title to the property (Rev. & Tax. Code § 62, subd. (b) and Property Tax Rule 462.240, subd. (a)).

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

Sincerely,



Richard S. Moon  
Tax Counsel

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cc: Honorable  
County Assessor

Mr. David Gau, MIC:63  
Mr. Dean Kinnee, MIC:64  
Ms. Mickie Stuckey, MIC:62  
Mr. Todd Gilman, MIC:70