

220.0745 **Transfers Between Co-owners.** The "transfer between co-owners" exclusion is available even though a transfer may not be completed in one assessment year. C 10/2/80.

(916) 445-6158

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Mr. Glenn Ricby
Attorney at Law

Napa, California 94950

This is in response to your letter of September 15, 1980, to Mr. Glenn Ricby in which you ask whether a partition, which took two assessment years to fully execute, renders the "change in ownership" exclusion provided by Section 62(a) of the Revenue and Taxation Code inapplicable.

Based on the letter and materials you sent and information obtained from the Napa County Assessor's Office, it is our understanding that the facts in this particular case are as follows:

1. On October 8, 1976, Buffington grants to Mead a 5/9 undivided interest in certain property located in Napa County. On the same date, the parties executed an agreement providing that Buffington and Mead held their respective 4/9 and 5/9 undivided interests as tenants in common.
2. In 1978, the parties determined that a partition of their tenancy in common interests in the property was necessary and they agreed upon a proportional division of the physical real property and improvements to represent their respective 4/9 and 5/9 undivided interests. (I do not have a copy of this agreement, nor knowledge of the exact terms thereof, but I will assume it was written and can be produced.)
3. On February 9, 1979, the final parcel map reflecting division of the parcel in conformance with a partition agreement was recorded. Thereafter, the Napa County Assessor revised his parcel map to reflect the new parcels created by subdivision by assigning APN 52-010-10 and 52-010-11 to old APN 52-010-06.
4. On March 5, 1979, Buffington executed a grant deed to Mead of her 4/9 interest in APN 52-010-11.

5. On March 25, 1980, Mead executed a grant deed to Buffington of his 5/9 interest in APN 52-010-10.

Section 62(a) of the Revenue and Taxation Code excludes from the definition of change in ownership, "any transfer between co-owners which results in a change in the method of holding title to the real property without changing the proportional interests of the co-owners, such as a partition of a tenancy in common." Simply from the face of the Buffington to Mead deed executed on March 5, 1979, it appears that there was a change in ownership as to the 4/9 interest in the 1980-81 assessment year and that Section 62(a) is not applicable because Mead obtained a 100% interest in fee simple absolute to APN 52-010-11. Absent evidence of an agreement between the parties to partition, the assessor was correct in reappraising the property for 1980-81.

The basic approach that we take to this type of problem is to hypothesize that after that March 5, 1979, transfer the parties had a disagreement resulting in a court case to determine their respective ownership rights in the property. Generally speaking, the courts are reluctant to interpret a deed as other than a conveyance of property unless the evidence is clear that the intent of the parties was other than appears on the surface. In a case, such as this, where there is an executory written partition agreement a breach thereof gives the other party the right either: (1) to treat it as rescinded and bring an action for partition of the land, or (2) treat it as existing and bring an action for specific performance (48 Cal Jur 3d, Partition §10.) It is our opinion that evidence can be produced that would demonstrate that Buffington had the right to receive title to APN 52-010-11, thereby effecting a fully executed partition, in which case the proportional interests of Buffington and Mead would be unchanged and Section 62(a) would be applicable. We further believe that denying the benefit of the exclusion to a fully executed partition covering more than one assessment year would both defeat the intent of the parties and frustrate the meaning of the statute.

Very truly yours,

Margaret S. Shedd
Tax Counsel

MSS:jlh

cc: Mr. George P. Abata, Napa County Assessor
Attn: Mr. William B. Wilson, Appraiser

bc: Mr. Gordon P. Adelman
Mr. Robert W. Gustafson