Chron

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 322-0050

August 25, 1992

Honorable Dick Frank
Assessor of San Luis Obispo County
County Government Center, Room 100
San Luis Obispo, CA 93408

Attention: Ms. Barbara L. Edginton
Deputy County Assessor

Dear Mr. Frank:

This is in response to your letter of April 2, 1992 to the attention of Mr. Richard Ochsner in which you request our opinion as to whether a change in ownership occurred as a result of the following facts described in your letter and other materials provided to us and which are set forth below.

In early February 1978, Dr. purchased seven parcels of land at a county tax sale but title to the land was placed in the name of , a friend, at the direction of Dr. According to a newspaper account, and copies of receipts for checks received in payment, Dr. paid $240,900 for the parcels which totaled 260 acres .

In his letters of March 15, 1992 and April 23, 1992, Dr. explains, among other things, that these parcels were most of the parcels in a "section" of land and that it was his intent to acquire the remaining parcels, as he was able, to complete the entire ownership of that "section". When the project was completed, the "proceeds" were to be given to his church. At the time, he was practicing medicine as an anesthesiologist and his malpractice insurance would have been $35,000.00 a year. He states that he could not conscientiously pass that cost along to his patients by charging higher fees so he elected not to carry insurance. He had no thought of being sued, but if something were to happen, he could not bear to see his project disrupted. He would have given it to the church at that time, but as a nonprofit organization, he states that the church could not assemble the project as a business. Since he was not married, he elected to put the property in a "holding" name of the only person he trusted implicitly, which was Trudy . Dr. states that Trudy did not pay one cent for the property, at no time did she pay the taxes, and "at

no time did she declare it on her income tax." Rather, he, Dr. claims to have done all of the above. Copies of his income tax returns for several relevant years tend to corroborate these claims. He says that Trudy signed an affidavit in which she disclaimed ever having any rights in the property and stated that she was solely a nominee but that affidavit was not provided to us. In addition, there is a recorded continuing farming agreement between Dr. and dated January 9, 1989 which recites that the agreement originated in 1978.

Dr. obtained a power of attorney executed by Trudy January 14, 1977 and quitclaim deeds that were executed by her in 1978. He held them in his safe deposit box but they were never recorded.

Except for the power of attorney and quitclaim deeds, Dr. and Trudy had only a verbal agreement. When Trudy married in 1983, Dr obtained a new set of quitclaim deeds from Trudy and her husband. The earlier quitclaim deeds cannot be located, but there are copies of the 1983 deeds, which were also unrecorded until 1990.

Dr. has now retired from his medical practice. In May 1990, he created a trust and conveyed title to the properties to the trust. The deeds executed by Trudy and her husband in 1983 were recorded in order to effect the transfers.

You have asked whether, based on the foregoing, a change in ownership occurred as a result of conveyances by Trudy to Dr.

As you know a "change in ownership" under Revenue and Taxation Code Section 60 requires that there be 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. Thus, Trudy must have had the beneficial ownership of the subject property in order for her conveyances to Dr. to constitute a change in ownership.

It is true that under Evidence Code Section 662, the owner of the legal title to real property is presumed to be the owner of the beneficial title. Such presumption, however, may be rebutted by clear and convincing proof. Here, the proof, if you find it credible, seems to indicate that Dr. continued to be the beneficial owner of the property. Further, however, it is well established law that when a transfer of property is made to one person, and the purchase price is paid by another, a trust is

presumed to result in favor of the person by whom such payment is made. Witkin Summary of California Law (9th ed. 1990) sections 300-304, pages 1134-1138. There seems to be no dispute here that Dr. paid the purchase price of the subject properties at or prior to the time the legal title was transferred to Trudy.

Accordingly, when the county conveyed the property to Trudy, a resulting trust in favor of Dr. was presumed to arise meaning, of course, that Trudy presumptively held the legal title as a resulting trustee for the benefit of Dr. , the beneficial owner. None of the evidence provided to us would tend to rebut that presumption.

In short, all of the evidence presented to us seems to support Dr. contention that he rather than Trudy remained the beneficial owner of the subject real property from the time of purchase in 1978. The conveyances by Trudy to Dr. , therefore, would not constitute changes in ownership.

Very truly yours,

Eric F. Eisenlauer

Eric F. Eisenlauer
Senior Tax Counsel

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cc: Mr. John Hagerty
Mr. Verne Walton

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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August 1, 1994

Reverend

Church

Parish

In Re: **Change in Ownership - Transfer of Bare Legal Title.**

Dear Reverend :

This is in response to your letter of June 28, 1994, to Mr. Verne Walton requesting our opinion concerning the change in ownership consequences of a transfer of a church diocese's title to a church parsonage from the diocese to the parish priest and a church member, followed by a loan application and loan (using the parsonage as collateral) with the loan proceeds being given to the diocese, and subsequent retransfer of the parsonage from the priest and church member to the diocese six years hence.

Pursuant to your letter and our telephone conversations, you have submitted the following facts for purposes of our analysis:

1. In 1967, several members of the Church purchased property in solely to provide a residence for the parish priest. Title to the parsonage was held in the name of the patriarch and each succeeding patriarch thereafter. In the late 1970's, the patriarch at that time transferred title out of his name into the name of the Parish.

2. Approximately five years ago, the diocese, the Diocese of Western United States, was incorporated, and all churches in the western United States were placed under its ecclesiastical authority. The bishop of the diocese transferred title to all real property, including title to this particular parsonage, to the diocese.

3. Because of financial difficulties currently facing the diocese, some of the properties must be sold and the proceeds transferred to the diocese. One such property is the parsonage in which you have resided since 1972. Your church members wish to retain ownership of the property and have therefore, proposed the following purchase arrangement: (a) you and one church member will apply for a loan on the property as "buyers;"

(b) upon loan approval, the diocese will transfer legal title to you and the church member as "buyers" in consideration for your tender of the loan proceeds to the diocese;

(c) although you and the church member will hold title to the parsonage for approximately six years, the diocese will make the monthly mortgage payments out of the proceeds of the "sale";

(d) after six years, or sooner when the diocese is financially able, diocese will "repurchase" the parsonage from you and the church member, taking title in its name once again, in return for paying off the loan.

You wish to know whether this transaction will constitute a change in ownership for property tax purposes. For the reasons hereinafter explained, we believe that it may not, depending upon the terms of the arrangement and whether the diocese will transfer only bare legal title, or beneficial ownership, to you and the church member.

LAW AND ANALYSIS

Revenue and Taxation Code 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."

Whether or not a particular transaction involving real property falls within this definition depends upon the facts in each case. To have a "change in ownership" under Section 60, the particular transaction must embody the following three characteristics contained in the definition:

(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.

As stated in the Report of the Task Force on Property Tax Administration dated January 22, 1979, "the general definition of change in ownership should control all transfers...".

Within that definition however, is the provision of Section 61(i) which includes as a change in ownership:

> The transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person.

As to the transfer of **legal title**, Evidence Code Section 662 provides that "the owner of the legal title to the property is presumed to be the owner of the beneficial title." Evidence Code Section 662 further provides that "this presumption may be rebutted only by clear and convincing proof." Clear and convincing proof has been defined as "clear, explicit and unequivocal...so clear as to leave no substantial doubt," and "sufficiently strong to command the unhesitating assent of every reasonable mind." (In Re Jost (1953) 117 Cal. App.2d 379, 383.)

You believe that the "purchase" and "reconveyance" described in the facts above tend to prove that the diocese does **not** intend to make a transfer of a "present beneficial interest in the property, including the beneficial use thereof", and that the "buyers" do not intend to receive it, indicating that no change in ownership will occur. Therefore, the question is whether this transfer from the diocese to buyers (and any subsequent re-transfer from buyers to diocese) is simply a transfer of bare **legal title** under subdivision (m) which does not result in a change in ownership.

In interpreting Section 60, Property Tax Rule 462, subdivision (m), (18 Cal. Code of Reg. 462) describes different types of transfers which do **not** constitute a change in ownership. Paragraph (6) is directed specifically to real property transfers between religious corporations. That provision states, in pertinent part, as follows:

> (m) The following transfers do not constitute a change in ownership:
>
> * * *
>
> (6) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h of the Revenue and Taxation Code holding title for the benefit of any of the aforementioned corporations, or any combination thereof (including any transfer from one such entity to the same type of entity) provided that both the transferee and transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

It appears at first glance that the transaction you have described might fall within the above rule described in paragraph (6) in that it constitutes a transfer from one religious corporation (the diocese) to the priest and a member of that corporation, then back to the diocese, and both the transferee and transferor are regulated by laws, rules, regulations, or canons of the same religious denomination. However, in our view subdivision (m)(6) is not applicable because the transfer proposed is **not** directly from one religious corporation (diocese) to another of the same type of entity (church within the diocese), but from the diocese to two individuals as "buyers" and from "buyers" to the diocese, with the proceeds of this "sale" vesting in the diocese.

Instead, the types of transfers described in subdivision (m) paragraph (1) <u>may be</u> applicable to this situation. That provision states, in pertinent part, as follows:

> (m) The following transfers do not constitute a change in ownership:
>
> (1) The transfer of bare legal title, e.g.,

(A) Any transfer to an existing assessee for the purpose of perfecting title to the property.

(B) Any transfer resulting in the creation, assignment, or reconveyance of a security interest not coupled with the right to immediate use, occupancy, possession or profits.

The underlying rationale of Rule 462, subdivision (m)(1), is that where the beneficial use of the property remains in the transferor and the transfer is not coupled with the right to immediate use, occupancy, possession or profits, the transfer is considered to be the transfer of mere legal title to the property and not the transfer of beneficial interest, "the value of which is substantially equal to the value of the fee" per Section 60.

This rationale was discussed and applied in the case of Parkmerced Co. v. City and County of San Francisco (1983) 149 Cal.App.3d 1091, where the plaintiff was a partnership formed for the purpose of acquiring and operating specified real property, but title to the property was held by one of the partners whose sole purpose was to hold the property for the partnership. The court held that the partner was merely the partnership's "nominee" designated to hold title for the partnership but without any right to use, occupancy, or profits. The court stated that no change in ownership occurs "upon the transfer of bare legal title without a corresponding transfer of the beneficial use thereof," and that since the partner held no more than "bare legal title" to the property, the subsequent transfer to the partnership was not a change in ownership.

The court stated at page 1095:

"...Today it is not at all uncommon for individuals, or corporations such as title companies, to hold `bare legal title' to property for the owner of its beneficial interest. Such a transaction is of the nature of a resulting trust which arises from a transfer of property under circumstances showing that the transferee was not intended to take the beneficial interest, and the transferee has no duty other than to deliver the property to the person entitled thereto, upon demand. ... And such a transfer, when made, will be of the property's `bare legal title' to the person already entitled to its beneficial use."

Based on the foregoing provisions, the diocese's transfer of title to you and one member as "buyers," for the sole purpose of securing a loan, would **not** constitute a change in ownership within the meaning of Section 60 if, under the terms of teh arrangement, only bare legal title is transferred and beneficial ownership is retained by the diocese. The standard we have applied under Rule 462, subdivision (m)(1) to similar cases in the past to determine beneficial ownership is whether or not the buyer received title **and** was immediately empowered to exercise the full incidents of ownership over the property, i.e., to encumber the property, to lease or rent it and receive rents and profits, to sell the property and receive the proceeds, etc. Thus, the result in this case depends upon the terms of the transfer.

Please be advised further, that a taxpayer claiming the benefit of an exception or exclusion from change in ownership has the burden of establishing to the satisfaction of the assessor that he or she qualifies for the exclusion. In cases where formal recorded documents, such as deeds, fail to contain complete terms which are consistent with the taxpayer's claim, then the assessor is entitled to require that the taxpayer's representations be established by other clear and convincing evidence. Therefore, the assessor may require other contemporaneous documents to establish that the normal incidents of the "buyers" holding-bare-legal-title relationship were observed.

The views expressed in this letter are, of course, advisory only and are not binding on the assessor of any county. You should consult with the County Assessor in order to confirm that the property involved will be assessed in a manner consistent with the conclusion stated hereinabove. Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this objective are appreciated.

Sincerely,

Kristine Cazadd
Staff Counsel