

535.0075 Valuation Upon Removal of Restriction. Property removed from an agricultural preserve shall be valued at its fair market value as of March 1, 1975 or as of the lien date following a subsequent change in ownership. The base year value determined shall be factored in accordance with the requirement of the Revenue and Taxation Code, C 9/7/84.

September 7, 1984

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SEARL Brothers Partnership

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This is in response to the May 11, 1984, request for an opinion sent to Mr. Richard Ochsner, Assistant Chief Counsel, by Leonard E. Searl and Gerald G. Searl.

The facts presented in the letter were that Searl Brothers is a general partnership engaged in farming near Hemet, County of Riverside, California. The interests are evenly divided between two brothers, with each owning 41 percent in their name and the remaining percentage (9% each) held in two trusts. The trusts are irrevocable trusts for the benefit of the children and issue of the brothers.

A significant part of the real estate is within Agricultural Preserve 5, Map 291. This preserve is in compliance with the California Land Conservation Act of 1965 (the Williamson Act).

On December 21, 1983, the partnership recorded a parcel map containing eighteen individual parcels. The following is being contemplated by the partnership and its partners:

(1) Distributing the land from the partnership to the partners in their "respective partnership interests". The title to the property will be transferred from the partnership to the partners as tenants in common.

(2) Shortly after the above distribution, on or about September 30, 1984, the parcels to be held in a tenancy in common status will be partitioned with each brother and trust combination receiving nine individual parcels.

Finally, it is stated that the affected properties will continue to remain in the agricultural preserve after the partition is completed, but may be removed therefrom at some time in the future.

The following rulings have been requested based upon the above information:

"1. That the real property included in Parcel Map 19190 will not become subject to reappraisal for property tax purposes at the time of its distribution by Searl Brothers to the individual partners, inasmuch as it is in an agricultural preserve and will remain in the preserve."

Response: So long as the property remains subject to the Williamson Act, it will continue to be assessed as enforceably restricted property pursuant to subdivision (a) of Revenue and Taxation Code Section 52, and will not be subject to reappraisal.

"2. That the real property included in Parcel Map 19190 will not become subject to reappraisal for property tax purposes when it is partitioned by the partners, as described above, assuming that it will continue to be in the agricultural preserve at the time of the partition."

Response: Revenue and Taxation Code Section 52(a) will be as controlling in this situation as it is in the transaction above. Accordingly, the transferred real property will not be subject to reappraisal for change of ownership purposes so long as it remains subject to the provisions of the Williamson Act.

"3. That the distributions of the real property included in Parcel Map 19190 by the Searl Brothers partnership to the individual partners and the subsequent partition do not constitute changes of ownership under terms of Proposition 13 and Sections 61 and 62 of the Revenue and Taxation Code."

Response: Without more than the above statement, the distribution by the partnership to the partners of the described real estate would fall squarely within the transaction

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described in subdivision (i) of Revenue and Taxation Code Section 61, and would constitute a change in ownership. This provision specifies that a change in ownership, as defined in Section 60, includes, but is not limited to:

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

However, the Searl brothers have indicated that the subject acreage has been acquired by them together over the years. So long as title to the parcels was taken in the same proportion as the brothers' present partnership interests, then the exception of subdivision (a)(2) of Revenue and Taxation Code Section 62 will be applicable. This provision states that any transfer between individuals and entities (or vice versa), which results only in a change in the method of holding title without any change in the proportionate ownership interests in each and every piece of real property, will not be considered a change in ownership. [See also Property Tax Rule 462(j)(2)(B) (18 Cal. Admin. Code § 462).] Thus, the transfer of title of the real property from the partnership to the partners (and their trusts) would not cause reappraisal.

The next series of transactions would partition the property between the brothers. Such an action is also the subject of a specific statutory exclusion from change in ownership which allows for transfers between co-owners of real property that do not change the proportional ownership of the property. [Rev. & Tax. Code § 62(a)(1).] This exclusion is available regardless of whether the property is held by tenants in common or by joint tenants. [See Property Tax Rules 462(b)(2)(A)(i) (tenants in common) and 462(c)(2)(D)(i) (joint tenants), (18 Cal. Admin. Code § 462) (copy enclosed).] Due to the unequal proportions held by the brothers (82%) and their trusts (18%), the property would be held as tenants in common rather than as joint tenants.

If we assume that one brother will be receiving Parcels 1 through 9, the amount of land transferred will be 233.8 acres. That allocation will leave the other brother Parcels 10 through 18, with 237 acres transferred. This will result in an unequal distribution with a difference of 3.2 acres. This disparity in the even distribution of the property might not be cause for denial of the exemption through non-compliance with the proportionality requirement of subdivision (a)(2) of Section 62.

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It has been our position that the assessor can exercise his own judgment in determining whether there has been a change in ownership of any partitioned property when the portions transferred are not exactly equal in value, rather than apply a standard requiring absolute equality. [Letter to Assessors, 80/84, dated May 16, 1980, page 2, copy enclosed.] This is an interpretation based on Revenue and Taxation Code Section 65.1, which provides for a de minimus exception in those instances where the market value of the interest transferred is less than five percent of the value of the total property and does not exceed \$10,000. This determination of value would have to be made by the assessor.

"4. That eventually when the real property included in Parcel Map 19190 is removed from the agricultural preserve its base for determining assessed value for property tax purposes will be its fair market value on March 1, 1975 adjusted in accordance with the relevant provisions of Proposition 13 and applicable law.

Response: Upon the application for removal of the land from the agricultural preserve, the provisions of Revenue and Taxation Code Section 51283 will be implemented. Under this statute, the assessor "shall determine the full cash value of the land as though it were free of the contractual restriction."

The position of the Board on this point was explained in Letter to Assessors No. 80/94, dated June 24, 1980 (copy enclosed). The taxable value of restricted property is computed in accordance with Property Tax Rule 460 (18 Cal. Admin. Code § 460). This rule provides for a fair market value to be determined as of March 1, 1975 and then factored in accordance with the relevant provisions of Proposition 13 (Cal. Const. Art. XIII A). Of course, to the extent a change in ownership may be found, the base year for determining full cash value would become the assessment year in which the change in ownership occurred.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county. You may wish to consult the Riverside County Assessor in order to confirm that the described property

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will be assessed in a manner consistent with the conclusions stated above.

Very truly yours,

Gilbert T. Gembacz
Tax Counsel

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Enclosures

cc: Mr. Frank C. Seeley
Riverside County Assessor

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bc: Mr. Gordon P. Adelman
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Mr. Verne Walton
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