



January 12, 1983

This is in reply to your letter of November 29, 1982 concerning the application for changed assessment by _____. The essential facts are as follows:

The applicant's grandfather, F _____ died intestate on July 14, 1980 owning an undivided one-quarter interest in certain real property, which is the subject of this appeal. The decedent, by his Last Will and Testament, devised his interest in that property to the applicant, _____. It is undisputed that a change of ownership occurred with respect to the undivided one-quarter interest in real property so transferred. What is in dispute, however, is whether the market value of the undivided one-quarter interest in real property should be discounted from its pro rata share of the full market value of the property.

Applicant's argument is that "said fractional interest represents a minority interest which would be worth much less than the proportionate share of the whole and also as a result of said fractional interest there should be an additional factor because of the reduction in the marketability of said fractional interest due in part to the fact that in the event the applicant were desirous of selling said interest to an outside third party, the purchaser would not pay the full value thereof as if the same were separate and independent parcels since the purchaser would be purchasing into a forced partnership with the owners of the remaining undivided three-fourths (3/4) interest and would be subject to their majority interest control in connection with the operation and management of said real property." Applicant argues that the value of the fractional interest should be discounted between twenty and forty percent and cites federal estate and gift tax authorities in support of his position. Applicant, however, cites no property tax authorities nor am I aware of any which support his position.

Revenue and Taxation Code¹ Section 51 (e) provides that in determining the taxable value of real property, "real property" means that appraisal unit which persons in the market place commonly buy and sell as a unit, or which are normally valued separately." Here, it seems beyond dispute that the proper appraisal unit is a one-hundred percent interest in the subject property and not an undivided twenty-five percent interest. Indeed, in arguing for a discount from the value of a proportionate share of the whole, the applicant seems to recognize that it is appropriate to first ascertain the market value of the whole property as a unit as of the date of the change of ownership.

Given an appraisal unit consisting of a one-hundred percent interest, it is inconsistent to discount the value of an undivided interest therein below its pro rata share of the total value because it is a minority interest or because it lacks marketability. Those arguments are promised on the assumption that the proper appraisal unit is the undivided twenty-five percent interest. Although such an undivided interest may be a proper appraisal unit for estate and gift tax purposes, if seldom, if ever, would be for the purpose of property tax assessment.

As you are aware, however, there is authority, which would permit the applicant to have a separate valuation of his undivided twenty-five percent interest for the limited purpose of collection on part of an assessment. For such purpose, Section 2802(b) provides that an undivided interest is a parcel separate from the whole assessment. For such purpose, Section 2802(b) provides that an undivided

¹ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

interest is a parcel separate from the whole assessment. Section 2821 sets forth the procedure for application to the tax collector to have any parcel separately valued for the purpose of paying taxes. Section 2823 requires the assessor to determine a separate valuation on the parcel and the remaining parcels but in relevant part further provides:

“The sum of the valuation of the parcels shall equal their total valuation before separation.”

Thus, even in the limited instance in which an undivided interest may be valued separately for property tax purposes, the sum of the parts must equal the whole valued as a unit.

Section 201 provides that all property in this State not otherwise exempt is subject to taxation. Section 401 requires every assessor to assess all property subject to taxation at its full value. If the assessor followed the applicant's theory in this case, that mandate would be violated. For example, assume the decedent in this matter had owned a one-hundred percent interest in the subject real property and had devised an undivided one-quarter interest therein to each of four people including applicant. Assume further that the market value of the whole property as a unit is 4100,000. Under the applicant's theory, the assessor should discount each undivided one-quarter interest by 20 to 40 percent which would produce an assessment at a total value of from \$60,000 to \$80,000 which is contrary to Section 401. It is obvious that in the above hypothetical situation, the assessor is required by law to assess the property at \$100,000 and that applicant's share is one-quarter of that amount. There is no loyal basis for treating the applicant differently in this case.

From the foregoing, it is our opinion that the proper method of determining the base year value of applicant's undivided twenty-five percent interest in the subject property is to first appraise the whole property as of the date of the change of ownership at its fair market value and to then allocate twenty-five percent of that figure to applicant's undivided interest.

Very truly yours,

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