



STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001
TELEPHONE (916) 324-2655
FAX (916) 323-3387

505.0074
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Executive Director

March 10, 1998

Honorable Gregory B. Hardcastle
Tulare County Assessor
Tulare County Civic Center
221 S Mooney Blvd., Room 102E
Visalia, California 93291



Attention: Mr. K

Dear Mr. S

This is to respond to your facsimile inquiries dated December 4, 1997, addressed to Ms. Kristine Cazadd of our legal staff, concerning the sale and leaseback transaction between Mr. and Mrs. E and the Redevelopment Agency of the City of . . . We will conclude that a change in ownership in the property, including the portion currently occupied by Mr. and Mrs. E has occurred, that Mr. and Mrs. E interest in that portion of the property is a taxable possessory interest, and that such possessory interest is not eligible for the Homeowners' Exemption.

From the documents you have provided us, it appears that Mr. and Mrs. E sold their property, including their residence, to the Redevelopment Agency. The Grant Deed conveying the property notes that the conveyance "is subject to . . . a leasehold interest recorded herewith in Grantor for a portion of the Site." The document recorded immediately following the Grant Deed is a Memorandum of Lease between the E and the Redevelopment Agency for a portion of the property conveyed in the Deed.

You also provided us with an executed copy of the Lease between the E and the Redevelopment Agency. It provides in pertinent part that the Agency leases and the E hire the residence described therein for so long as either of the E maintains the property as his/her/their primary residence. Rent is set at one dollar per year. You note that the E have at all times had exclusive possession and use of the home site. In light of these facts, you have requested our opinion as to whether or not the E interest in the home site is subject to local property assessment and taxation; if assessable, what is the appropriate authority to use in valuing and taxing the interest; whether the interest is a continuing interest or a change in ownership; and whether the E interest in the home site is of such a nature that it would qualify for the Homeowners' Exemption. For the reasons set forth below, it is our opinion that the interest created by the Lease is a taxable possessory interest, that such interest should be assessed based upon the value of the use for the unexpired term of the Lease, that the E

interest is not continuing but rather, a change in ownership has occurred, and that the home site is not eligible for the Homeowners' Exemption.

Revenue and Taxation Code Section 107, subdivision (a), provides that:

"Possessory interests" means the . . . (a) Possession of, claim to, or right to the possession of land or improvements that is independent, durable, and exclusive of rights held by others in the property, except when coupled with ownership of the land or improvements in the same person.

A leasehold estate, and specifically the terms of the Lease under which the E . . . continue in possession of the home site, carries a right to the possession of land and improvement, and therefore constitutes real property for purposes of taxation. Although ordinarily a leasehold is taxed to the owner of the reversionary interest, the value of the lessee's estate being treated as a constituent part of the valuation of the freehold, where, as here, the reversion is publicly owned and therefore tax exempt, a separate assessment of the leasehold to the lessee may be had. *San Pedro, etc. R. R. Co v. City of Los Angeles* (1919) 180 Cal. 18; *Hammond Lumber Co. v. Los Angeles County* (1930) 104 Cal.App. 235; *Hammond Lumber Co. v City of Los Angeles* (1936) 12 Cal.App.2d 277. The Redevelopment Agency to which the E . . . deeded the property is a "tax exempt governmental entity" as contemplated by this rule. *Redevelopment Agency v. County of San Bernardino* (1978) 21 Cal.3d 255, at p. 264, footnote 4.

Consequently, the E . . . possess a taxable possessory interest in the home site by reason of the Lease, and that portion of the property should be assessed based upon the value of the use for the unexpired term of the Lease. *Connolly v. County of Orange* (1992) 1 Cal.4th 1105, 1118.

You next ask whether the E . . . interest is a continuing interest or a change in ownership. Subdivision (b) of Section 61 of the Revenue and Taxation Code provides simply that "change in ownership, as defined in Section 60, includes . . . the creation . . . of a taxable possessory interest in tax-exempt real property for any term. . . ." There exists no applicable exclusion from change in ownership for the creation of a possessory interest such as has been created under the facts as you relate them. As such, in our view, a change in ownership of the portion of the property subject to the Lease did occur by reason of the Lease of the home site from the Redevelopment Agency to Mr. and Mrs. E . . .

You further inquire whether the E . . . interest in the home site is of such a nature as to be eligible for a Homeowners' Exemption.

Subdivision (k) of Section 3 of Article XIII of the California Constitution provides for exemption of "\$7,000 of the full value of a dwelling, as defined by the Legislature, when occupied by an owner as his principal residence." The Legislature has provided that this exemption "does not extend to property which is rented." Revenue and Taxation Code § 218. Applying these provisions to the Lease between the Redevelopment Agency and Mr. and Mrs. E . . . is somewhat more difficult than with an ordinary lease which provides for "rent." Here, as noted above, the Lease provides for nominal rent. However, it is clear that the E . . . are

not the "owners" of the subject property, the constitutional prerequisite for the exemption which the Legislature was distinguishing by providing that the exemption does "not extend to property which is rented." Moreover, the parties have denominated the document creating the E interest a "Lease Agreement," they entitled the paragraph in which the \$1.00 per year payment is set forth, "Rent," and they described the payment "As *rental* for the premises herein *leased* . . ." The Board of Equalization has consistently concluded that leasehold interests of every nature are governed by the cited provisions of Section 218. We would, therefore, conclude that Mr. and Mrs. E interest in the home site is a leasehold interest, and consequently not eligible for the Homeowners' Exemption.

We reach each of the above conclusions fully aware that the Deed contained language referencing the Lease, and of the provisions of Revenue and Taxation Code section 62, subdivision (e), which provides that change in ownership shall not include "[a]ny transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life." We are similarly aware that Property Tax Rule 462.080 provides in part that "[t]he creation . . . of a taxable possessory interest in tax exempt real property for any term is a change in ownership . . . [except] an interest, whether an estate for years or an estate for life, created by a reservation in an instrument deeding the property to a tax exempt governmental entity." A careful review of the language in the Deed discloses that, in fact, no interest in the property was "reserved" thereby. It is true that the Deed states that the property is subject to the Lease, just as it notes that the property is subject to the Redevelopment Plan of the City of D the E executed a Grant Deed without reservation, and they executed a separate Lease Agreement. It is our view that the E rights to possess the home site are created in the Lease, and not reserved in the Deed.

Of course, as you note, the views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,



Daniel G. Nauman
Tax Counsel

DGN:jd

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cc: Mr. Rudy Bischof, MIC:64
Mr. Dick Johnson, MIC:63
Ms. Jennifer Willis, MIC:70

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MAR 11 1998

DEPUTY DIRECTOR
PROPERTY TAXES