

## Memorandum

To : Honorable Betty T. Yee, Chairwoman  
Honorable Judy Chu, Ph.D., Vice Chair  
Honorable Bill Leonard  
Honorable Michelle Steel  
Honorable John Chiang

Date: February 21, 2007

From : Kristine Cazadd   
Chief Counsel

Subject: **February 27, 2007 Board Hearing**  
**Item M1 - Other Chief Counsel Matters**  
**Request for Filing Amicus Curiae Brief**  
***Steinhart v. County of Los Angeles***  
**Court of Appeal, Second Appellate District, Case No. B190957**

The appellate court in the case of *Steinhart v. County of Los Angeles*, a property tax case involving a change in ownership under Proposition 13, as defined in Revenue & Taxation Code section 60, has invited the Office of the Attorney General and the Howard Jarvis Taxpayers Association to submit briefs as amici curiae on the issue of whether *Leckie v. County of Orange* (1998) 65 Cal. App.4<sup>th</sup> 334 was correctly decided, in view of the decision of the California Supreme Court in *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4<sup>th</sup> 155. A copy of the February 6, 2007, letter from the court to counsel and prospective amici curiae is attached. The Office of the Attorney General has asked the Board of Equalization if it will participate in the filing of an amicus brief.

We recommend that the Board authorize our participation in the filing of an amicus brief in *Steinhart* which supports *Leckie* and the position of the County of Los Angeles. We previously supported the county position in *Leckie*, as the Board filed an amicus curiae brief in that litigation ten years ago. The *Leckie* decision distinguished the *Pacific Southwest Realty* case.

*Leckie* confirmed that, for purposes of determining change in ownership, a life estate in real property is an interest equivalent in value to the fee interest. The decision is based upon and consistent with sections 60, 61, 62, 63, and 67 of the Revenue and Taxation Code and Property Tax Rule 462.060(a), which provides, "The creation of a life estate in real property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor's spouse. However, the subsequent transfer of such a life estate by the transferor or the transferor's spouse to a third party is a change in ownership."

A major policy benefit of *Leckie* and Rule 462.060(a) is that they effectively permit California property tax law to avoid unwarranted complexity by identifying the primary owner in the life tenant/remainder owner context, so that only a transfer by him or her will result in a change in ownership and, when it occurs, the entire property will be reappraised.

Due to the significance of the long-established and well-supported principles enunciated in *Leckie* and Rule 462.060(a), we request that the Board authorize the Legal Department to participate in the filing of the requested amicus curiae brief supporting both our rule and the published *Leckie* decision.

If you have any questions regarding this decision, please contact Legal Affairs Acting Supervising Tax Counsel Anthony Epolite at (916) 324-2642.

Approved:   
Ramon J. Hirsig  
Executive Director

KC:bb

Attachment: February 6, 2007, Court of Appeal Letter to Counsel and Prospective Amici Curiae

cc:	Mr. Ramon J. Hirsig	MIC:73
	Mr. David Gau	MIC:63
	Mr. Dean Kinnee	MIC:64
	Ms. Anita Gore	MIC:86
	Mr. Robert Lambert	MIC:82
	Ms. Jean Ogrod	MIC:82
	Ms. Janice Thurston	MIC:82
	Mr. Jefferson D. Vest	MIC:85
	Mr. Anthony S. Epolite	MIC:82

Mr. W. Dean Freeman, Supervising Deputy Attorney General  
Business and Tax Section  
Office of the Attorney General



JOSEPH A. LANE  
CLERK OF THE COURT/ADMINISTRATOR

DANIEL P. POTTER  
ASSISTANT CLERK/ADMINISTRATOR

## Court of Appeal

STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

300 SOUTH SPRING STREET  
SECOND FLOOR, NORTH TOWER  
LOS ANGELES, CALIFORNIA  
90013  
(213) 830-7000

February 6, 2007

[SEE ATTACHED SERVICE LIST]

Re: *Steinhart v. County of Los Angeles*  
2d Civ. No. B190957  
(Los Angeles Super. Ct. No. LC073339)

Dear Counsel and Prospective Amici Curiae:

This case involves the change in ownership aspect of Proposition 13. The issue is whether 73-year-old Lorraine Steinhart's acquisition of a life estate in real property upon the death of her sister amounted to a change in ownership for purposes of triggering a reassessment.

Steinhart sued the County of Los Angeles for a refund of excess property taxes, alleging the County erred in reassessing the subject real property. The trial court sustained a demurrer by the County to Steinhart's original complaint without leave to amend. The trial court was guided by *Leckie v. County of Orange* (1998) 65 Cal.App.4th 334, which held a life estate transferred to a nonspouse third party constitutes a change of ownership. (*Id.* at p. 339.) The issue before us is whether, in view of Revenue and Taxation section 60's definition of the term "change in ownership"<sup>1</sup> and the Supreme Court's decision in *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155 (*Pacific*), *Leckie* was decided correctly.

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<sup>1</sup> All further statutory references are to the Revenue and Taxation Code, unless otherwise indicated.

Section 60 states: "A 'change in ownership' means 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.*" (Italics added.)<sup>2</sup>

In *Leckie*, the issue presented was whether the creation of a life estate in 58-year-old Rachel Cordova pursuant to the terms of a revocable trust, following the death of her cohabitant, Charles Adams, constituted a change in ownership for purposes of reassessment of property value. (*Leckie, supra*, 65 Cal.App.4th at p. 336.) The lower court therein found Cordova's life estate was not substantially equal to the fee interest and ruled no change of ownership had occurred. (*Id.* at p. 338.) *Leckie* reversed, holding "a life estate transferred to a nonspouse third party should constitute a change of ownership." (*Id.* at p. 339.)

*Leckie* relied on a regulation promulgated by the State Board of Equalization which provides, "*The creation of a life estate in real property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor's spouse.* However, the subsequent transfer of such a life estate by the transferor or the transferor's spouse to a third party is a change in ownership. Upon termination of such a reserved life estate, the vesting of a right of possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership." (Cal. Code Regs., tit. 18, § 4.260(a), italics added; *Leckie, supra*, 65 Cal.App.4th at p. 339.)

Can *Leckie* and the cited regulation be reconciled with the Supreme Court's decision in *Pacific* and with section 60, the controlling statute? <sup>3</sup> *Pacific* construed the third prong of section 60, which requires that the value of the interest transferred be "substantially equal to the value of the fee interest." (*Pacific, supra*, 1 Cal.4th at pp. 164-166.)

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<sup>2</sup> If the value of the interest being transferred, here, a life estate, is a question of fact, how can the issue be resolved on demurrer?

<sup>3</sup> We note that "an administrative rule that exceeds the Legislature's grant of authority as expressed in section 60 et seq. is without effect and may not be enforced. [Citations.]" (*Pacific, supra*, 1 Cal.4th at p. 171.)

In its discussion, *Pacific* states: “*In enacting the third prong of section 60 the Legislature meant to insulate from Proposition 13’s effect transfers in which only an estate of lesser value was conveyed.* Two examples illustrate the Legislature’s intent when it adopted the [Task Force on Property Tax Administration] report’s findings and enacted the statutory scheme before us. [¶] One example considers the conveyance of a lease for one year. It would not be rational to apply a constitutional provision for reassessment following a ‘change in ownership’ when the owner of an apartment leases it to another for one year, thereby conveying an estate of lesser value than that retained. [¶] By contrast, the Legislature decided, following the task force’s recommendation, that the creation of a 35-year lease would achieve a change in ownership (§ 61, subd. (c)(1)) because the length of the lease would give the lessee’s interest some of the practical attributes of a conveyance of fee simple. A lease of such duration will constitute the main economic value of the land, even though the leaseholder does not own a freehold estate -- lenders are, in the report drafters’ view, willing to lend on the security of such an instrument. (See task force rep., *supra*, at pp. 39-41.)

“Another example is the conveyance of fee simple from parent to child subject to the reservation of a life estate. The Legislature desired to avoid creating a rule that would characterize such a conveyance as a change in ownership. Because this is a relatively common form of conveyance, the Legislature, again following the task force’s recommendation, included it in its list of examples of exempt transfers. (§ 62, subd. (e).) *But even if the Legislature had not done so, reassessment would be barred under the carefully drafted basic test of section 60, not only because the beneficial use would not have transferred, but also because the value of each divided interest in the estate would not approach that of a fee.*[<sup>4</sup>] A purchaser of the reserved estate would be buying a life estate *per autre vie* -- a freehold estate, to be sure, but an estate of questionable value because subject to complete defeasance at an unknown time. Rare is the mortgagee willing to lend on the security of an estate so ephemeral. The value of the reversionary or remainder interest would also be reduced because the time of vesting would be uncertain and, depending on the care with which the original conveyance was drafted, the value of the ultimate estate might be less at the time of vesting because of intervening conveyances, creditors’ demands, and the like.

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<sup>4</sup> *Leckie* acknowledged *Pacific*’s characterization of a life estate as “an estate of questionable value” which does “not approach that of a fee” (*Pacific, supra*, 1 Cal.4th at p. 165; *Leckie, supra*, 65 Cal.App.4th at p. 340), but *Leckie* dismissed that language as “dicta” (*Leckie, supra*, at p. 340), apparently because *Pacific* involved the sale and leaseback of an office building.

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“By contrast, *when the life estate ends and the remainder or reversion indefeasibly vests in the grantees the value of the estate is known and is identical to the value of the fee. It is at that point that a change in ownership has occurred*, as the Legislature specifically provided in accord with the task force’s recommendation. (§ 61, subd. (f).)”  
(*Pacific, supra*, 1 Cal.4th at pp. 155-156, italics added, fn. omitted.)

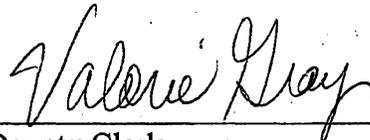
Due to the statewide importance of the matter, the dearth of California case law on point, and to have the benefit of a full exposition of these issues, the court invites amicus briefing from the Attorney General of the State of California, the Howard Jarvis Taxpayers Association and any other interested parties. Thereafter, the parties shall have the opportunity to respond to any amicus briefs which may be filed. (Cal. Rules of Court, rule 8.200(c)(5).)

Prospective amici curiae are requested to advise this court at their earliest convenience as to whether they intend to file amicus briefs, and if so, the date the court can expect to receive the briefs.

Very truly yours,

JOSEPH A. LANE, Clerk

By



Deputy Clerk

## SERVICE LIST

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

LORRAINE STEINHART,

Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES et al.,

Defendants and Respondents.

B190957

(Los Angeles County  
Super. Ct. No. LC073339)

ORDER

COURT OF APPEAL - SECOND DIST.  
**FILED**

FEB 6 - 2007

JOSEPH A. LANE

Clerk

V. GRAY

Deputy Clerk

THE COURT:

On the court's own motion, the matter is taken off calendar for briefing by amici curiae. Upon completion of supplemental briefing, the matter will be placed back on calendar, with new calendar notices to follow.