



Memorandum

To: Mr. J. Thomas McClaskey

Date: July 20, 1995

From: Eric Eisenlauer *Eric Eisenlauer*

Subject: Clarification of Memorandum from Eric Eisenlauer
Dated December 12, 1994

This is in response to your memorandum of January 26, 1995 to Mr. Richard Ochsner in which you request clarification of the referenced memorandum. In that memorandum, we concluded, among other things, that where the owner of real property conveyed such real property to the USA reserving to the grantor and his heirs and assigns "the right of use and occupancy for Livestock Ranching and single family residential purposes only for a term of 25 years..." an estate for years was reserved to the grantor and that under Property Tax Rule 462, subdivision (e), no change in ownership occurred.

You have requested clarification of our memorandum through the following questions:

1. How should the property be assessed for property tax purposes? Upon the transfer of the property to the USA, should the base year value of the property be reduced recognizing that some of the rights were granted to the USA or should the property be considered restricted under Section 402.1? Or should the property be assessed in fee recognizing that the rights granted to the USA are private restrictions and not considered for property tax purposes?

Response: In our memo of December 2, 1994, we concluded that since there was no change in ownership the adjusted base year value in effect at the time the transfer occurred should be continued subject to appropriate adjustments for inflation and the taxable value would be subject to value declines below the adjusted base year value. With respect to value declines, Rule 461, subdivision (d) requires "comparing the current lien date full value of the appraisal unit to the indexed base year full value of the same unit...." Thus, the fact that the USA owns a remainder interest in the property and the transferor owns an estate for years should not be considered for purposes of

determining whether there has been a value decline below the adjusted base year value in any year. The unit to be valued for value decline purposes, therefore, is the fee simple interest and not the estate for years. This approach is consistent with the conclusion that there has been no change in ownership as a result of the transfer.

With respect to any rights effectively conveyed to the government through restrictions on use contained in the deed, i.e., the right to put the property to a higher and better use, we believe that the adjusted base year value could be adjusted to reflect the loss of such rights. In our view, however, whether or not the base year value should be reduced depends upon whether, as a factual matter, the base year value reflected any value for such rights. See attached letter of February 22, 1994 to E. L. Sorensen from Richard H. Ochsner. As a practical matter, this may be difficult to determine.

Revenue and Taxation Code section 402.1 requires assessors to consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected. Section 402.1 has been interpreted to mean only governmental restrictions. See *Carlson v. Assessment Appeals Board No. 1* (1985) 167 Cal.App.3d 1004, 1010, Rule 2, subdivision (a), and Rule 324, subdivision (a).

Section 402.1, subdivision (a) includes but is not limited to eight specified enforceable restrictions to which the use of land may be subjected. These include recorded contracts with governmental agencies other than those provided in section 422 (Rev. & Tax. Code §402.1, subd. (a)(2)) and a recorded conservation, trail, or scenic easement as described in Civil Code section 815.1, that is granted in favor of a public agency or specified nonprofit corporation that has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open space condition or use (Rev. & Tax. Code §402.1, subd. (a)(8)).

The deed in this case restricts the use of the property to single family residential and livestock ranching purpose only. Such a restriction in the deed assuming it was recorded, could, in our opinion, be viewed as a recorded contract with a government agency other than those provided in section 422. We believe such a restriction is also analogous to a conservation or scenic easement as described above.

Accordingly, the restrictions contained in the deed in favor of the USA in this case would seem to constitute enforceable restrictions within the meaning of section 402.1.

2. Should there be a creation of a possessory interest when the estate for years is transferred to another party?

Response: By the express terms of section 62, subdivision (e) and Rule 462, subdivision (e), there was no change in ownership when the property was transferred to the USA with an estate for years reserved to the transferor. For property tax purposes, therefore, the transferor and not the USA remained the owner of the property. Since the USA, a tax exempt public entity, is not considered to own the property, the use and possession of the property by the transferor is not a taxable possessory interest. A transfer of the estate for years by the transferor to another party would not alter that result because the USA would still not be deemed to own the property after such transfer. Thus, no taxable possessory interest would be created by such transfer. As indicated in our original memorandum, such a transfer would not be a change in ownership because it would be a transfer of an estate for years for less than 35 years. (Rule 462, subd. (d)(2).)

3. Are the rights granted to the USA assessable? If not, it seems that each year the estate for years gets shorter, the taxable value will decrease. another view point is to consider the estate for years similar to a life estate. Despite the aging of the holder of the life estate, there is no reduction in the assessment until the termination of that estate.

Response: See our response under 1. above.

EFE:jd
precednt/govnprop/95002.efe

Attachment

cc: Mr. John Hagerty - MIC:63
Mr. Dick Johnson - MIC:64
Ms. Jennifer Willis - MIC:70
Mr. Alan Haim, Marin County Counsel's Office