STATE OF CALIFORNIA

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June 4, 1990

Honorable L.W. "Lee" Daniels
Placer County Adm. Center
145 Fulweiler Avenue
Auburn, CA 95603-4594

Re: Placer County Assessor's Parcel

Dear Mr. Daniels:

This is in response to your letter of May 9, 1990 to the Chief Counsel of the State Board of Equalization in which you request our opinion concerning when a change in ownership of real property occurred under the facts set forth below.

The decedent, , died testate July 19, 1989. Her estate is being administered and her will probated in Placer County proceeding No. . Included in decedent's estate among other assets was decedent's residence.

Decedent's will and codicil provided in relevant part:

"* * *

FIFTH: I authorize my executor to reduce to cash or other liquid form, all or so much of the assets of my estate as my executor deems necessary or convenient to effect and distribute the assets of my estate to the persons and entities and in the respective percentages and amounts represented thereby as set forth in paragraph SIXTH of this Will.

My executor shall have full power, authority and discretion to sell or dispose of any assets of my estate, at such times on such terms, and for such consideration as my executor, in her or his discretion deems best, and distribution of my estate may be made in cash, or in kind, or partly cash and partly in kind as my executor deems best.

SIXTH: I give, devise and bequeath all of my estate and the assets and proceeds thereof to the following

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persons and entities in the following amounts or percentages represented thereby as follows:

1. First, to my brother ARTHUR I leave the sum of $10,000.00, if he shall survive me. If my brother shall not survive me, then such gift shall lapse and become part of the rest, residue and remainder of my estate, to be disposed of in accordance with subparagraph 2 below.

2. Secondly, I leave the rest, residue and remainder of my estate to the following persons and entities in accordance with the following percentages:

NAME	Percentage
(1) RICHARD , RODNEY and JAMES , share and share alike;	75%
(2)	10%
(3)	8%
(4)	2%
(5)	1%
(6) and , share and share alike	2%
(7)	1%
(8)	1%

SEVENTH: As to the sale or disposition of any assets of my estate by my executor as authorized above, any such sale or disposition may be made at public or private sale, with or without notice, or prior order of court, as my executor deems best, and subject only to such confirmation of court as may be required by law.

* * *"

Pursuant to foregoing power, authority and discretion, the executor of the estate sold the residence property on April 24, 1990.

Your office issued a supplemental assessment based on a change in ownership of the residence property as of the date of decedent's death.

Mr. , the attorney representing the executor, contends that no change in ownership occurred as of the date of death because the decedent's will directed the

property to be sold which prevented the devisees from receiving title to the property.

While there is no property tax statutory provision or case precisely on point, Property Tax Rule 462 (n)(3) provides that the date of a change in ownership by will or intestate succession is the date of death of the decedent. The rationale for this rule is set forth in the enclosed letter dated February 25, 1982 from Douglas D. Bell, Executive Secretary of the Board.

Although Rule 462(n)(3) provides for no exception in its application, Mr. contends that no change in ownership occurred at death because the legatees received no interest in the real property at that time. Mr. 's position is apparently based on the doctrine of equitable conversion. That doctrine is set forth in Probate Code section 6144 which provides that "[u]nless a contrary intention is indicated by the will, if a will directs the conversion of real property into money, the property and its proceeds are deemed personal property from the time of the testator's death."

Such an argument was rejected by the Court of Appeal in California Academy of Sciences v. County of Fresno (1987) 192 Cal.App. 3d 1436.

In that case, the Academy was a residuary devisee of real property under the decedent's will. The issue was whether the Academy became the owner of the real property at the date of decedent's death in which case the real property was exempt from property tax and the taxpayer was entitled to a refund of property taxes paid during the administration of decedent's estate. In holding that the Academy did become the owner of the property at the date of death, the Court of Appeal rejected the County's contention that there was an equitable conversion of the real property into money at the time of decedent's death. The court stated that "[t]he discretionary authority granted to the executors to sell the real property does not permit the application of the equitable conversion doctrine."

That is the case here. Decedent's will does not direct the conversion of real property into money as required by Probate Code section 6144. Instead, paragraph FIFTH of her will merely gives the executor the power, authority and discretion to sell assets of the estate. Paragraphs SIXTH and SEVENTH are consistent with this conclusion. It is, therefore, our view that no equitable conversion occurred in this case. Accordingly, based on the foregoing authorities, the devisees under the will became the owners of the property as of the date

of decedent's death and a change in ownership for property tax purposes occurred at that time. Another change in ownership occurred when the property was sold in April 1990.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

Eric F. Eisenlauer
Tax Counsel

EFE:mw
3305H

Enclosure

cc: Mr. John Hagerty
Mr. Verne Walton