

(916) 323-7712

June 22, 1982

This is in response to your letter of June 16, 1982, to Mr. Glenn Rigby in which you ask our opinion of the application of the change in ownership provisions to a transfer of a fee interest subject to a lease. Specifically, the lease was entered into in 1963 for a period ending on December 31, 1989. On October 24, 1980, the lessor transferred the fee interest, which was subject to a lease with a remaining term of 9 years. The issue presented is whether the entire fee interest is to be reappraised as of the October 24, 1980, change in ownership. The answer is "yes" for the following reasons:

Section 60 of the Revenue and Taxation Code defines a change in ownership as "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." Sections 61(c) and 62(g) further define what is a change in ownership with respect to real property subject to a lease. These provisions contemplate that if the property is subject to a lease of 35 years or more, then the lessee is considered to be the owner of the property, as his right is considered to be "substantially equal to the value of the fee interest." On the other hand, if the property is subject to a lease with a remaining term of less than 35 years, then the lessor is considered the owner of the fee interest. The apparent legislative purpose of defining who is considered to be the owner of an interest in real property subject to a lease is to avoid the unwarranted complexity in valuing the leasehold interest and the reversion separately. Therefore, by considering either the lessee or lessor to be the owner of the entire property at any given time, then a transfer by either will determine whether or not a change in ownership has occurred with respect to the whole property. In this regard, please see enclosed copies of relevant pages from "Report of the Task Force on Property Tax Administration" and "Property Tax Assessment," both of which

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were prepared by the staff of the Assembly Revenue and Taxation Committee. Finally, directly on point is Property Tax Rule 462(f) (3) which provides:

Once a change in ownership of taxable real property subject to a lease has been deemed to have occurred, the entire property subject to the lease is reappraised (i.e., the value of both the lessee's interest and the reversion).

In closing, it should be noted that appellant's reliance on Section 65.1(a) is misplaced. This section applies only if the leased portion of the real property is less than 5% of the total value of the property and is worth less than \$10,000. An example would be the transfer of an undivided 1/25 interest in property valued at \$2,000 which is subject to a lease with a remaining term of 10 years. The transfer of this interest would not be reappraised under Section 65.1, provided that other interests in the property did not transfer in the same assessment year which cumulatively met the 5%/\$10,000 threshold test.

I trust this is responsive to your inquiry. If we may be of further assistance to you in this matter, please do not hesitate to contact this office.

Very truly yours,

Margaret S. Shedd
Tax Counsel

MSS:jlh

Enclosure