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January 3, 2003

El Dorado County Assessor's Office
360 Fair Lane
Placerville, CA 95667

In re: *Change in Ownership; Termination of Life Estate; Personal Lifetime Right of Occupancy Agreement.*

Dear :

This letter is in response to your phone conversation on October 18, 2002 with Ms. Kristine Cazadd and the subsequent facsimile in which you ask for a legal analysis regarding whether a Personal Lifetime Right of Occupancy Agreement (Agreement) constitutes a life estate for change in ownership purposes. Included in the facsimile were a copy of the Agreement, a copy of a deed, and correspondence from an attorney. For the reasons discussed in detail below, we do not believe that the Agreement constitutes the creation of a life estate.

It is our understanding that the pertinent elements of the transaction are as follows:

- Transferor (T) had a life estate interest in her residential real property (Home).
- T executed a grant deed in 1993, in which she conveyed the Home to transferees¹ subject to her right to occupy the Home and to include it within the federal gross estate for tax purposes.
- The transfer removed T's life estate in the Home and replaced it with title to her right of occupancy.
- The Agreement regarding Personal Lifetime Right of Occupancy, which is irrevocable, acknowledged that T retained a personal lifetime right of occupancy in the Home, first by a reservation of life estate that was removed from the title concurrent with the Agreement, and subsequently by transferring title per the Agreement.
- T acknowledges and the Agreement expressly states that she did not retain any rights to rental income that may be generated by the Home, as her intent is to fulfill the requirements of Department of Health Services all County Welfare Directors Letter No. 90-01.

¹ We assume that the transferees do not include T's spouse or children. The information provided did not indicate that any such relationship existed. The existence of such a relationship could have a material effect upon our opinion.

Legal Analysis

Revenue and Taxation Code section 60² 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."

Under section 61, subdivision (g), any vesting of the right to possession or enjoyment of a remainder interest, which occurs upon the termination of a life estate or other similar precedent property interest, except as provided in subdivision (d) of section 62 and in section 63, is a change in ownership. Changes in ownership may occur upon both the creation and termination of the life estates (upon transfer to the remainder persons), unless an exclusion applies.

Under Property Tax Rule 462.060(a), the creation, transfer, or termination of a life estate is a change in ownership, apart from the application of an exclusion. This rule states, in part, that:

(a) LIFE ESTATES. 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 to possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership. [Emphasis added.]

A life estate is defined as an estate whose duration is *limited to the life of a person* holding it, or to the life of some other person. Estate of Smythe (1955) 132 Cal. App. 2d 343. A life estate can be granted or reserved by deed, created by will, *or by any other written instrument*. While no particular language is required to create a life estate, any language in a recorded instrument that reserves in the land *a lifetime interest, right, or privilege* (estate) for the benefit of the grantor or others and withholds that right or privilege from the operation of the grant creates a "life estate." By the reservation, the grantor reserves something in himself or others which is newly created by the grant, giving himself a present interest and the remainderman a future interest. Victory Oil Co. v. Hancock Oil Co. (1954) 125 Cal. App. 2d 222.

This definition is consistent with the rationale for the exclusion adopted by the Legislature in section 62(e). The rationale, stated in Implementation of Proposition 13, Vol. I, Property Tax Assessment, by the Assembly Revenue and Taxation Committee, October 29, 1979, page 29, is as follows:

(3)...Transfers with a retained life estate are not ownership changes until the life tenant dies. The life tenant has the dominant or primary interest under the value equivalence element of the general change in ownership definition, and there is

² Unless otherwise indicated, all statutory references are to the Revenue and Taxation Code.

no transfer of the present interest in the property until the life tenant dies and the property vests in the remainder. At the time, the provisions of trusts and interspousal transfers permitting, a change in ownership shall be deemed to have occurred (section 62(e)).

T had a retained life estate that was transferred at the time the Agreement was executed. Rule 462.060 clearly provides that the subsequent transfer of a life estate by the transferor to a third party is a change in ownership. Upon the execution of the Agreement, the Transferor expressly terminated her life estate and transferred to the grantees/transferees "any and all rental proceeds generated by the Home." (Agreement p. 2.) Simultaneously, the Agreement reserved to the Transferor - in lieu of the life estate - a personal lifetime right of occupancy in the Home until her death.

The question is whether the lifetime right of occupancy is tantamount to a life estate or not. If it is, there is no change in ownership - as T simply changed her method of holding title. If the right of occupancy is not a life estate substitute, then the beneficial interests in the property transferred to the grantees; (and no exclusion applies since they are not children).

In analyzing such question in the past, we have concluded that there was a change in ownership at the time the Agreement and the concurrent removal of the retained life estate from the deed were executed. In the opinion dated 4/13/92, Annotation No. 220.0372, attached, we concluded that where the grantor's property interest was divided into a present lifetime right to the income for a friend and a future right to the remainder for grantor's spouse and children, the transfer (and/or termination) of the life estate in the present income constituted a change in ownership. It is the right to the income from property that is controlling for purposes of determining who owns the beneficial use. *Re Estate of Duffill* (1919) 180 C 748, 183 P 337.

In this case, it is clear that the life estate in T was terminated by her 1993 grant deed and Agreement; which Agreement also transferred the lifetime right to the income from property to the grantees. The remaining "personal right of occupancy" that T retained was less than that of a life estate, as evidenced by the language which expressly manifests T's intent to remove her beneficial interests as a life tenant in order to satisfy the requirements of the Department of Health Services (presumably to obtain eligibility for MediCal benefits). We have consistently advised that unless other evidence contradicts, assessors should honor the intentions of the parties manifested by the language in the instruments creating, transferring or terminating a life estate. Annotation No. 220.0374, attached. Respecting T's intent expressed in the instruments we have received leads to the conclusion that she terminated her prior life estate and transferred a new life estate to the grantees, resulting in a change in ownership of the property in 1993.

The views expressed in this letter are advisory in nature 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 yours,

/s/ Paul A. Steinberg

Paul A. Steinberg
Senior Tax Counsel

Attachments: Annotation 220.0372 and 220.0374

JKM:lg

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cc: Ms. Kristine Cazadd, MIC:82
Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Sherrie Kinkle, MIC:64
Ms. Glenna Schultz, MIC:64
Ms. Jennifer Willis, MIC:70