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April 13, 1981

This is in response to your letter to Glenn Rigby of December 23, 1980, regarding our interpretation of whether a change in ownership occurs when there is a transfer of the fee to an exempt park district with a reservation of a life estate to the transferor. Please excuse our delay in responding to your inquiry.

Basically, the facts you set forth in your letter are as follows:

1. Property owned by the grantor has a 1975 base year value.

2. In 1976, the grantor grants the fee to the property to an exempt regional park district, reserving a life estate to himself.

3. The grantor is 70 years old.

You then ask if the property should retain its 1975 base year value or whether there is a recognizable decline in value of the property due to the fact that the value of the retained life estate is less than the fee value of the property.

Prior to the time AB 1488 (Chapter 242, Statutes of 1979) was enacted, the Assembly Revenue and Taxation Committee established a Task Force to study and advise the Committee on the implementation of Proposition 13. From the Task Force Report came AB 1488 which added Sections 60 through 67 to the Revenue and Taxation Code (change in ownership). In Section 60, the Legislature adopted a basic three-part test for what constitutes a change in ownership of real property, thereby triggering a reappraisal. This three-part test for determining a

change in ownership is: (1) a transfer of a present interest, (2) a transfer of the beneficial use of the property, and (3) the property rights transferred are substantially equivalent in value to the fee interest.

Consistent with this definition are specific exclusions set forth in Section 62. Section 62(e) particularly excludes "any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life; however, the termination of such an estate for years or an estate for life shall constitute a change in ownership, except as provided in Subdivision (d) of Section 62 and in Section 63." The rationale for this exclusion, as set forth in Implementation of Proposition 13, Vol. I, Property Tax Assessment (prepared by the staff of the Assembly Revenue and Taxation Committee, October 29, 1979) on 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 no transfer of the present interest in the property until the life tenant dies and the property vests in the remainder. At that time, the provisions of trusts and interspousal transfers permitting, a change in ownership shall be deemed to have occurred.

Based on the foregoing, it is our opinion that no change in ownership occurs when the owner grants to the park district the fee to this property in 1976 and retains a life estate. Therefore, the property continues to have a 1975 base year value. Since the owner is deemed to be the owner of the fee until the termination of the life estate, we do not believe the provision of Article XIII A, Section 2(b) relating to declines in value is applicable for the reason that the value of the fee itself has not declined. A change in ownership of that fee occurs only when the life estate terminates and the right to possession or enjoyment vests in the remainderman (Section 61(f)). In this regard, we believe it to be a distinction without a difference that the remainderman is a tax-exempt governmental agency.

Very truly yours,

Margaret S. Shedd
Tax Counsel

MSS:jlh