No.

.6) 324-6594

April 12, 1984

Change in Ownership

Your letter to Mr. Gene Palmer of January 27, 1984, has been referred to me for reply. In your letter, you have requested an opinion of whether a change in ownership occurred with respect to the execution and delivery of a mining lease on December 1, 1983. Although a copy of the lease was not provided with your letter, the Memorandum of Mining Lease, which was enclosed, provides that:

> "[The] lease is for an indefinite duration subject to the payments therein contained, provided however, that such lease shall not exceed the lifetime of the oldest presently living descendant of Her Majesty Queen Elizabeth, II of England, plus twenty-one (21) years, which lease covers and includes all of the Lessor's right, title and interest in and to certain patented mining claims...."

Revenue and Taxation Code Section 61(c)(1) and Property Tax Rule 462(f)(1)(A)(i) provide that the creation of a leasehold interest in real property for a term of 35 years or more constitutes a change in ownership of real property. Although the term of possession created by the instrument in question may exceed 35 years, the instrument specifies a term of only 21 years which is to commence at the death of the oldest presently living descendant of Queen Elizabeth II. Since the instrument does not specifically create a leasehold interest of 35 years or more, there has been no change in ownership under Revenue and Taxation Code Section 61(c)(1) and Property Tax Rule 462(f)(1)(A)(i).

It appears, however, that the instrument, although designated a "lease", has created a life estate as well as a leasehold interest. No particular language is required to create a life estate, Smythe Estate, 132 Cal. App. 2d 343. Such an estate is created where the language of the instrument manifests an intention by the transferor to pass to the transferee a right to possess, use, or enjoy property for the period of the transferee's life or the life of another, Bernal v. Wade, 46 Cal. 663. That is the case here. The "lease" is for an indefinite duration measured by the life of another person plus 21 years. The fact that the words "life estate" do not appear in the language of the instrument does not prevent that language from being construed as creating such an estate, Nichols Estate, 199 Cal. App. 2d 783. It, therefore, seems clear that the transferee has received a life estate measured by the life of another plus a leasehold interest for 21 years.

Property Tax Rule 462(d)(1) provides in relevant part that "the creation of a life estate in real property is a change in ownership at the time of the transfer...." Accordingly, since the "lease" created a life estate in real property in the transferee on December 1, 1983, there was a change in ownership as of that time.

Very truly yours,

Eric F. Eisenlauer
Tax Counsel

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