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STATE OF CALIFORNIA

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Executive Secretary

July 27, 1987

Dear Mr. _____

Re: Partition of Assessor's Parcel No. _____

This is in response to your letter dated July 1, 1987, in which you request our opinion on whether the following transaction constituted a partition excluded from change in ownership under Revenue and Taxation Code section 62(a)(1). The facts as set forth in your letter are as follows:

> "The original piece of property in question was a 60 acre parcel designated as Assessor's parcel No. _____ Legal title to this property was held as follows: John _____ and M. Joanne _____, husband and wife, as community property, as to an undivided one-half interest and James _____ and Thelma _____, husband and wife, as community property, as to an undivided one-half interest. In November of 1986, the parties agreed to divide the parcel into two separate 30 acre parcels with each party taking an undivided interest to one of the 30 acre parcels. As a result, a parcel map was filed and the Donovans took sole ownership of one 30 acre parcel designated as Assessor's Parcel No. _____ and James _____ and Thelma _____ took possession of the other 30 acre parcel designated as Assessor's Parcel No.

The Assessor has reappraised the property. You believe that the parcel division should be excluded as a partition under section 62(a)(1) of the Revenue and Taxation Code.

Revenue and Taxation Section 62(a)(1) provides that change in ownership shall not include:

> "Any transfer between co-owners which results in a change in the method of holding title to the real property transferred without changing the proportional

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interests of the co-owners in that real property, such as a partition of a tenancy in common."

A partition is a division of property giving separate title to those who previously held undivided interests. (Code Civ. Proc. §§ 872.810-872.840.) The transfers in this case divided ownership and title to the property between the owners in consideration for each others mutual transfer. They resulted, therefore, in a partition of property previously held in undivided interests. Further, each party received 30 acres of the original 60-acre parcel. Therefore, the partition was proportional. We believe that this transfer complies with the requirements of section 62(a)(1) and should not be considered a change in ownership.

The only basis that the Assessor could have had for a reappraisal in this case could be if the Assessor considered the two parcels to be two appraisal units before the transfers. Before the parcel was divided into two separate 30-acre parcels, the entire 60-acre parcel was one appraisal unit. After the subdivision, at the time of the transfers, the Assessor may have considered the appraisal unit to be the two individual parcels.

In Letter to Assessors No. 80/84, May 16, 1980, we discussed the application of section 62(a)(1) to each appraisal unit. We stated:

> Although there are no statutory limitations placed upon the location or extent of the property involved in the transfer, it is our position that Section 62(a) should be applied separately to each appraisal unit. For example, the splitting of jointly held interests in two separate and distinct properties would require the comparison of the proportional interests held before and after the transfer in each separate property.
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> * * *
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> <u>Example #1</u>
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> Persons "A" and "B" are co-owners of a farm consisting of ten parcels. "A" and "B" are equal tenants in common (1/2 undivided interest each). The appraisal unit is determined to be the entire farm and the base year value of the appraisal unit is $300,000 (each owner has 1/2 interest valued at $150,000). A transfer is then implemented granting person "A"

severalty ownership of six parcels and person "B" severalty ownership of four parcels. The interests held by each owner must be appraised to determine if either interest has changed proportionally in value. If "B's" new holding has a current market value of $400,000 and "A's" new holding has a current market value of $600,000 there has been a change in ownership of a 10 percent interest (i.e., "A" now holds 60 percent and "B" holds 40 percent). "B's" base year value must be reduced since he now owns less than he did prior to the transfer. His new value would be $120,000 ($300,000 x .40). "A's" value must be increased. His $150,000 base value would remain intact, but the 10 percent interest transferred (he owned 50 percent originally and now owns 60 percent) would be added to the $150,000. His new base would be $150,000 + $100,000 (10 percent of the new total market value of $1,000,000) or $250,000.

Example #2

Persons "A" and "B" own 1/2 undivided interest each in two single-family residential vacant lots. The lots are the same size and have the same value ($5,000 base and $10,000 current market). A transfer is implemented to give "A" and "B" severalty (single) ownership of one lot each. If each lot is determined to be a separate appraisal unit, this would be a change in ownership transaction. Each owner had an undivided 1/2 interest in a given appraisal unit. Each ended up with severalty ownership of the entire unit thereby gaining a 1/2 interest in the unit. A reappraisal of the 1/2 interest transferred would be in order. The new base value of each lot would be $2,500 (1/2 the old base) + $5,000 (1/2 of the market value of $10,000) or $7,500. For the Section 62(a) exclusion to apply, each co-owner would have to receive 1/2 of each lot by way of a lot split, thereby receiving 1/2 of the appraisal unit.

If after the subdivision, the appraiser considered the two parcels to be two different appraisal units, the assessor may have reappraised each parcel according to example 2. However, there is a distinction between the present case and the case in example 2. In the present case, the parcels had been, prior to a recent subdivision, one appraisal unit. However, it was necessary for the owners to subdivide before they could partition. If the owners had not complied with the subdivision statutes prior to partition, the owners may be (1) guilty of a misdemeanor (Gov. Code § 66499.31), (2) subject to a restraining order or injunction (Gov. code § 66499.33), and (3)

denied all permits and approvals required to develop the property (Gov. Code § 66499.34; see 64 Cal.Ops.Atty.Gen 762, 769 (1981).). Thus, the subdivision was merely a necessary step in the process of partitioning the property. Therefore, we believe that the present case should be characterized in the same manner as the farm which contains ten parcels in example 1. It should not be treated differently just because there was a subdivision, required by law, prior to the partition.

In conclusion, it is our opinion that this transaction is excluded from change in ownership by section 62(a)(1). This opinion is, however, advisory only and the ultimate determination rests with the Assessor. If you have any questions or wish to discuss this further, please contact me.

Very truly yours,

Michele F. Hicks

Michele F. Hicks
Tax Counsel

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cc: Hon. Robert Shellenberger
San Joaquin County Assessor