STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879 SACRAMENTO, CALIFORNIA 94279-0001)
TELEPHONE (916) 322-0050
FAX (916)323-3387

220.0552

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

E. L. SORENSEN, JR.
Executive Director

November 1, 1996

Dear Mr

This is in response to your letters of July 31 and August 19, 1996 in which you request our opinion as to whether a change in ownership occurred as a result of the following facts provided to us by you and Edwin and Cathleen

Factual Background

1. The subject property consists of a recreation residence located, pursuant to a special use permit, on U.S. Forest Service land near Bass Lake in Madera County.

2. The recreation residence was acquired in fee from Jessie by Melvin and Vivian as joint tenants by a grant deed dated November 18, 1974.

3. Special use permits issued by the U.S. Forest Service for recreation residences are, by their express terms, not transferable and specifically provide that purchasers of improvements on sites authorized by such permits must secure a new permit from the Forest Service. The special use permit of the grantor is terminated before a new special use permit is issued to the grantee.

4. On November 18, 1974, Jessie requested termination of his special use permit on the subject property and Melvin and Vivian applied for and, prior to March 1, 1975, received a special use permit on the subject property.

5. Melvin passed away in 1975.

6. On October 10, 1975, Vivian recorded an Affidavit - Death of Joint Tenant.

7. On October 10, 1975, Vivian recorded a grant deed conveying the subject property to herself, her daughter, Melva and her son, Edwin , all as joint tenants.

8. On February 3, 1989, the Forest Service issued a special use permit for the subject property to Vivian

9. On August 8, 1995, Vivian , Melva , Edwin and Cathleen executed a grant deed conveying the subject property to Edwin and Cathleen husband and wife as community property.

10. In September 1995, Edwin and Cathleen applied to the Forest Service for a special use permit for the recreation residence. As of August 1996, none had been issued.

You have asked whether the conveyance of the subject property to Edwin and Cathleen in 1995 is excluded from change in ownership either under Proposition 58 or because Ed was previously on the title to the recreation residence.

For the reasons set forth below, we conclude that the transfer of the recreation residence, but not the possessory interest in the Forest Service land may qualify as a parent-child transfer for purposes of Proposition 58 and that a change in ownership of the possessory interest in the Forest Service land will occur when a new special use permit is issued to Edwin and Cathleen

Law and Analysis

1. Possessory Interest in Forest Service Land

Although the grant deeds mentioned above in paragraphs 2, 7, and 9 purported to transfer or convey the possessory interest in Forest Service land used for the recreation residence in this case, such deeds did not convey or transfer the possessory interest. As indicated in paragraph 3 above, the special use permits issued by the Forest Service for recreation residences are, by their express terms, not transferable and specifically provide that the purchasers of improvements on sites authorized by such permits must secure a new permit from the Forest Service.

The Supreme Court of Utah reached this conclusion in Family Finance Fund v. Abraham (1982) 657 P.2d 1319 (copy enclosed) wherein it stated at page 1322:

> ...[a]lthough the permittee may facilitate the termination of his/her permit and the issuance of a new permit, the permittee cannot transfer or convey the permit itself. Rather, each permittee may only transfer the improvements.

Also enclosed for your information is a copy of a page from the Forest Service Manual confirming the general nontransferability of a special use permit.

Thus, there is no basis in this case for concluding that the possessory interest in the Forest Service land was the subject of a parent/child transfer or that Edwin and Cathleen had or received any ownership or other legal interest in the possessory interest as a result of the 1975 and 1995 grant deeds. Clearly, neither conveyance was a change in ownership of the poassessory interest. However, when the Forest Service issues a new special use permit to Edwin and Cathleen for the recreation residence, a new taxable possessory interest in tax exempt real property will be created for their benefit. Since the creation of a taxable possessory interest in tax exempt real property is a change in ownership for property tax purposes under Revenue and Taxation Code[1] section 61(b), the assessor must determine a new base year value for the possessory interest in accordance with section 110.1 when the change in ownership occurs.

---

[1] All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

2. Conveyances of Recreation Residence

When Vivian created a joint tenancy in the recreation residence among herself, her daughter and her son in 1975, such creation or transfer was excluded from change in ownership under sections 62(f) and 65(b) because she was the transferor of the residence and was among the joint tenants after creating the joint tenancy. As a result, she was an "original transferor" as defined in section 65(b) for purposes of determining the property to be reappraised on subsequent transfers.

Section 65(c) provides that upon the termination of an interest in any joint tenancy described in section 65(b), the entire portion of the property held by the original transferor prior to the creation of the joint tenancy shall be reappraised unless it vests in a remaining original transferor, in which case there shall be no reappraisal. Thus, when the joint tenancy in the residence was terminated in 1995 by the conveyance to Edwin and Cathleen as community property, there was a change in ownership in the residence under section 65(c) subject, of course, to the possible application of the parent/child exclusion.

Under section 65(b), the "original transferor" is considered to hold the entire interest held by the joint tenancy. See LTA 89/16, a copy of which is enclosed. Thus, when Vivian , Melva , Edwin and Cathleen executed the grant deed in 1995 conveying the residence to Edwin and Cathleen as community property, the transfer was only by Vivian for property tax purposes because she was the only "original transferor" and thus held the entire interest in the joint tenancy property. The 1995 deed should, therefore, be treated as a transfer from Vivian to Edwin and Cathleen for property tax purposes. Since a daughter-in-law qualifies as a child for purposes of the parent/child exclusion under section 63.1 (c)(2)(C), Cathleen qualifies as a child of Vivian for such purpose.

Accordingly, if the transfer of the recreation residence is within the $1 million limitation of section 63.1(a)(2) and a timely claim is filed pursuant to section 63.1 (d) and (e), the parent/child exclusion would apply to the 1995 transfer of the recreation residence..

The views expressed in this letter are, of course, advisory only and are not binding on the assessor of any county.

Very truly yours,

Eric F. Eisenlauer

Eric F. Eisenlauer
Senior Tax Counsel

EFE:ba
Enc.

cc: Mr. Jim Speed w/o enclosure -- MIC:63
Mr. Dick Johnson w/enclosure -- MIC:64

h:\property\precednt\possints\1996\96007.efe