



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
916 445-4982 • FAX 916 323-8765
www.boe.ca.gov

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First District, San Francisco

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TO COUNTY ASSESSORS:

No. 2008/007

CHANGE IN OWNERSHIP – LIFE ESTATE

Property Tax Rule 462.060 provides that 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.

In *Leckie v. County of Orange* (1998) 65 Cal.App.4th 334, the Fourth Appellate District Court of Appeal upheld the validity of the Board's rule, opining that a transfer of real property with a retained life estate is not a change in ownership. The Fourth District concluded that a life tenant has the primary interest in the real property under the value equivalency test, and there is no transfer of the present interest in the property until the life tenant dies and the property vests in the remainder.

However, on September 28, 2007, the Second Appellate District Court of Appeal conversely opined in *Steinhart v. County of Los Angeles* (B190957) that the transfer of real property to a life tenant did not constitute a change in ownership as the conveyance of the life estate was not a transfer "substantially equal to the value of the fee interest." Instead, the Second District concluded that "the transfer of a life estate in real property never constitutes a change in ownership." The Second District further concluded that Rule 462.060 conflicted with Revenue and Taxation Code section 60 and that the rule was therefore invalid.

The County of Los Angeles petitioned the *Steinhart* decision for review with the California Supreme Court and, on December 12, 2007, the Supreme Court agreed to hear the case. With the Supreme Court's grant of review, this Court of Appeal decision has no force or effect. Until the final disposition of *Steinhart*, Rule 462.060 remains valid and the creation of a life estate in real property is a change in ownership unless the estate is for the transferor or the transferor's spouse. However, if the Supreme Court upholds the appellate decision and Rule 462.060 is found to be invalid, no change in ownership, and, thus, no reassessment of property, will result from the transfer of real property to any life tenant. In the event that Rule 462.060 is found to be invalid, we will provide guidelines to county assessors on how to comply with the court decision.

Sincerely,

/s/David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

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