220.0580

STATE OF CALIFORNIA

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Executive Director

June 5, 1989

Dear Ms. [illegible] :

I am writing in response to your letter dated April 26, 1989. The facts set forth in your letter, and in the accompanying materials, can be summarized as follows:

Facts

1. On January 24, 1985, certain real property in Nevada County was acquired by John [illegible] (sometimes referred to as the "son" and sometimes referred to as the "taxpayer") and his wife as joint tenants, as to an undivided 50 percent interest, and Marcella [illegible] (the "mother"), as to an undivided 50 percent interest. Hereafter, the mother's undivided 50 percent interest therein shall be referred to as the "property."

2. The mother died testate on July 3, 1987.

3. The mother's will dated May 30, 1987, specifically provided that the property was to be distributed in equal shares to Karen [illegible], Judy [illegible], Kathy [illegible] (collectively, the "daughters") and the son.

4. On February 9, 1988, the probate court in Yolo County ordered that the subject property be distributed in equal shares to the son and the daughters.

5. On March 6, 1988, the son and the daughters executed the Agreement Regarding Estate Distribution (the "agreement"). Such agreement contains provisions including the following:

F 13
Co-owner

a. The subject property is:

". . . improved with a single family residence. The remaining undivided one-half interest in said real property is owned by John and his wife, Tamie . Said property was distributed in equal shares to all four of the parties to this agreement under the terms of the decree of distribution of the Yolo County Superior Court described above. It is agreed and acknowledged, however, that said property was purchased by John and his wife with the assistance of a loan from Marcella and that Marcella intended to hold title to the undivided one-half interest in the property only in order to secure re-payment of the loan and not as a co-owner of an equity interest. The fair market value of the decedent's undivided one-half interest in the property in the estate of Marcella was appraised at $50,000 by the probate referee. After taking into account the decedent's true intent, the parties agree that the value of the decedent's interest in the property for the purposes of this agreement is approximately $25,000. The parties agree and acknowledge that it was Marcella :'s intention that John receive Marcella interest in the Nevada County property in satisfaction of his one-fourth (1/4) share of her estate."

b. "We further agree and acknowledge that Marcella did not, in fact, claim an equity interest in the Nevada County property as co-owner of a one-half interest, but rather held title to said interest solely to secure repayment of a loan with a current paid balance of approximately $25,000. To the extent that the actual unpaid balance may have differed from the actual sum of $25,000, the parties agree that it was Marcella intent that John receive the Nevada County property in full satisfaction of his share of her estate."

c. "KATHY . JUDY , and KAREN agree to transfer and convey to JOHN all of their right, title and interest in and to the Nevada County property."

6. On March 14, 1988, a quitclaim deed was recorded, which deed described the subject property, was executed by the daughters and was in favor of the son. On that same date, the son recorded a grant deed of the entire Nevada County property to himself and his wife as joint tenants.

7. The Preliminary Change of Ownership Report (the "PCOR") recites that the mother never intended to purchase an interest in the Nevada County property for herself and that the deed was recorded as a substitute for a deed of trust to secure repayment of the loan. The PCOR further states that the mother's intention remained consistently to be a lender, not an owner. It is alleged that the children ". . . agreed among themselves to re-distribute [the mother's] assets after the close of probate in a manner consistent with [the mother's] intentions of treating her interest in the Nevada County land as a loan transaction."

8. In the Application for Changed Assessment, the son states that:

> It was the wishes of my mother that upon her death I should inherit her interest in the property. The Attorney for her Estate, . . . said that the only way to clear title was to transfer her interest to my sisters and myself and then have them quitclaim their interest. Which is what we did."

You have requested our opinion of the change in ownership consequences of the above-described events.

Law and Analysis

Pursuant to section 62(c)(1) of the Revenue and Taxation Code (all section references set forth herein shall be to the Revenue and Taxation Code unless otherwise specified), change in ownership shall not include the creation, assignment, termination or reconveyance of a security interest.

The taxpayer argues that his mother took title to the undivided 50 percent interest in the Nevada County residence merely as a

security device in order to secure the repayment of funds advanced by her in the purchase of such residence.

In support of this contention, the taxpayer offers his own testimony and his and his sisters' recitals and statements set forth in the agreement. No evidence is proffered as to any verbal or written statements by the mother supporting or confirming such claim.

Further, the mother's will, which was prepared almost two and one-half years after the joint acquisition of the property, purports to specifically devise such undivided one-half interest to all of her children in equal shares. Contrary to the taxpayer's assertions, such will provision demonstrates that (i) the mother believed that she possessed not just a security interest, but full beneficial fee ownership of the subject property, sufficient to permit her to devise her ownership thereof to her children via the will - no mention is made of any alleged debt obligation; and (ii) the mother intended not that the property go solely to her son, but that beneficial fee ownership of such property be equally allocated among all four of her children.

No evidence is presented showing that the taxpayer ever contested his mother's beneficial ownership of the property in the probate proceeding.

Section 662 of the Evidence Code provides a presumption that a deed grants full beneficial title to its recipient, unless such presumption can be overcome by clear and convincing proof.

Section 1105 of the Civil Code similarly provides that a fee simple title is intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended.

Pursuant to Property Tax Rule 462(k)(1) of Title 18 of the California Code of Regulations, in overcoming the rebuttable presumption set forth in the above-referenced section 1105, consideration may be given to factors including the following:

(i) The existence of a debt or promise to pay;

(ii) A great inequality between the value of the property and the price alleged to have been paid;

(iii) The grantor remaining in possession with the right to reconveyance on payment of the debt; and

(iv) A written agreement between the parties to reconvey upon payment of the debt.

Such rule further provides that the best evidence of such factors shall be a judicial finding or order, but that proof may be made by declarations under penalty of perjury accompanied by such written evidence as may be reasonably available, such as written agreements, cancelled checks, insurance policies and tax returns.

In the instant case, no written evidence is presented supporting the taxpayer's position other than his and his sisters' representations, all of which were made subsequent to the date of the mother's death. There is no proof presented as to the terms of the alleged debt or as to the son having a right to obtain a reconveyance by paying off such alleged debt. In fact, the only objective written evidence presented - the will - rebuts the taxpayer's position. In light of the above, we conclude that the taxpayer has failed to meet his burden of proving his position by clear and convincing evidence.

Therefore, when the mother died, the beneficial ownership of her 50 percent interest passed pursuant to her will to her children in equal shares. Actual record title to such property was granted to the four devisees on the recording of the final probate order.

As the above events took place after November 6, 1986, and the "full cash value" of the property was apparently under $1,000,000, such devise to the decedent's children would appear to be exempt from change in ownership consequences pursuant to the parent-child exclusions set forth in section 63.1, provided that the requirements of such section are otherwise satisfied.

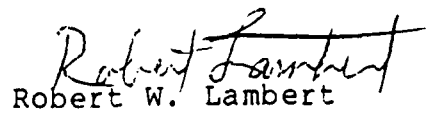
At this point, title to the Nevada County residence was as follows:

Son	62.5%
Daughters	37.5%
Total	100.0%

However, subsequently, on March 14, 1988, the daughters transferred their collective 37.5 percent interest to the taxpayer in conformity with their earlier agreement. This later transaction results in a change in ownership as to such 37.5 percent interest in the subject residence for which there is no applicable exclusion.

Please call me should you have any further comments or questions with regard to this matter.

Very truly yours,



Robert W. Lambert
Tax Counsel

RWL:wak
2439H

cc: Hon. Gilbert L. Shotwell
Nevada County Assessor
Mr. John W. Hagerty
Mr. Robert H. Gustafson
Mr. Verne Walton

220.0581 **Record Title.** In reviewing claims that no change in ownership has occurred because the recorded title to property does not reflect the true ownership of property, the assessor should be guided by the formal legal procedures applicable to the conveyances of real properties and the recordation requirements for listing properties in public records. A conservative viewpoint should be taken when considering assertions that an unrecorded, secretly-held document constitutes a conveyance of property. C 8/3/81.