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(916) 323-7712

June 30, 1982

This is in response to your letter of May 5, 1982, to Mr. [illegible] to which you attach a copy of a letter of the same date to [illegible]. By way of these letters you ask our opinion of whether the transfer of a right to receive future appreciation in certain real property is a change in ownership for property tax purposes.

As you are aware, Section 60 of the Revenue and Taxation Code generally provides that a change in ownership means "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." The concept that there must be a transfer of present, beneficial, interest is also embodied in Section 62(e) which excludes transfers of a fee with a reserved life estate; under this circumstance the future interest is not reappraised until the life estate terminates and the future interest becomes present. With respect to the "substantial equivalent to a fee interest" element, we are of the opinion, that the mere gift or contract of the right to receive future appreciation does not create a future interest in a fee or the substantial equivalent of a fee. It appears to convey no more interest in real property than a contractual assignment of future rents.

Based on the foregoing, we disagree with your assertion that such a contractual arrangement would "freeze" the market value of the property for property tax purposes as of the date of sale or gift of the future appreciation. Rather, we are of the opinion that a change in ownership occurs on the sale by or death of the owners of the fee interest and the property should be reappraised as of that date. Persons with a right to receive the future appreciation would simply have a claim against the sale proceeds or the estate.

You further ask whether such a transaction would be construed to be a partnership arrangement. Without more specific facts, we are unable to answer. However, enclosed please find a copy of a response to another inquiry which generally sets forth our opinion with regard to such estate planning partnerships which propose to "freeze" the future appreciation of real property.

Very truly yours,

Margaret S. Shedd
Tax Counsel

MSS:jlh

Enclosure