


## Memorandum

To: Honorable Jerome E. Horton, Chairman  
Honorable Michelle Steel, Vice Chair  
Honorable Betty T. Yee, First District  
Senator George Runner, Second District  
Honorable John Chiang, State Controller

Date: May 7, 2012

From: Randy Ferris   
Chief Counsel

Subject: **Other Chief Counsel Matters – May 30-31, 2012**  
**Item Number M1**  
**Request for Authorization to File *Amicus Curiae* Brief**

*Joan Thayer, in her Capacity as Marin County Assessor v. Assessment Appeals Board No. 1*  
(Real Parties in Interest: James Mikkelsen, et. al.)  
Marin County Superior Court Case No. CIV1003775  
First District Court of Appeal No. A134340

### BOARD APPROVAL REQUESTED TO FILE AMICUS BRIEF

The purpose of this memorandum is to request Board authorization for the Legal Department to file an *amicus curiae* brief in the above appeal on behalf of the Marin County Assessor (Assessor), as requested in a letter to the Board of Equalization (Board) dated April 2, 2012. (See Attachment A.) In this case, the Assessor relied upon Revenue and Taxation Code<sup>1</sup> section 65, and the Board's longstanding interpretation and application of that statute set forth in Property Tax Rule<sup>2</sup> 462.040, *Change in Ownership – Joint Tenancies*, Letter to Assessors 83/39 and Property Tax Annotations (Annotations)<sup>3</sup> 220.0295 (4/15/1987) and 220.0298 (9/11/1985). Nevertheless, the trial court ruled against the Assessor and in favor of the taxpayer.

We are now requesting authorization to file an *amicus* brief on behalf of the Assessor in the court of appeal because a published appellate decision upholding the trial court would not only

---

<sup>1</sup> All further statutory references are to the Revenue and Taxation Code unless otherwise specified.

<sup>2</sup> All "Property Tax Rule" or "Rule" references are to title 18 of the California Code of Regulations.

<sup>3</sup> Property tax annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State Board of Equalization's Property Tax Law Guide. (View the Property Tax tab on our website and see Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

overturn the Board's longstanding interpretation of the statute and rule, but also could potentially create a significant adverse statewide revenue impact with respect to change-in-ownership assessments of joint tenancy interests.

Article XIII A, section 2 of the California Constitution requires the reassessment of real property upon a "change in ownership." With respect to joint tenancies in particular, section 61, subdivision (e) provides that a change in ownership occurs upon "[t]he creation, transfer, or termination of any joint tenancy interest"-- resulting in a reappraisal of the percentage interest transferred -- unless an exclusion applies.<sup>4</sup>

In the case at issue, in 1997, James Mikkelsen (James) transferred property from himself, as the sole owner, to himself and his brother Robert Mikkelsen (Robert) as joint tenants. This transfer was not subject to reassessment pursuant to section 65, subdivision (b), which excludes from the definition of change in ownership the creation or transfer of a joint tenancy interest if, after such creation or transfer, the "transferor or transferors . . . are among the joint tenants."

Thereafter, in 2007, James and Robert terminated their joint tenancy by transferring the property to themselves as tenants in common, resulting in each owning an equal interest in the property. Then, as mandated by section 61, subdivision (e), the Assessor properly reassessed an undivided 50 percent interest in the property on account of the transfer of real property interest from the joint tenancy to Robert as a tenant in common (2007 Transfer).

Finally, in 2010, James transferred his 50 percent tenant-in-common interest in the property to Robert, who then became the sole owner of the property (2010 Transfer). The 2010 Transfer constituted a change in ownership subject to reassessment. Therefore, as a result of the series of transactional steps discussed above, James ultimately transferred 100 percent of his ownership interest in the property to Robert, which resulted in one 50 percent reassessment in the 2007 Transfer and another 50 reassessment in the 2010 Transfer, respectively.

The reassessment resulting from the 2010 Transfer of James's 50 percent tenant-in-common interest to Robert is not in dispute. Thus, the parties are in agreement that, when a tenant in common transfers his interest to another co-tenant, that transfer constitutes a change in ownership subject to reassessment. Instead, the sole issue presented is whether or not the 2007 Transfer, which resulted from the termination of the joint tenancy, resulted in a change in ownership.

In this case, notwithstanding the ultimate 100 percent change in ownership of the property from James to Robert, the Superior Court incorrectly held that section 62, subdivision (a)(1) and Rule 462.040, subdivision (b)(4) excluded the 2007 Transfer to Robert from change in ownership consequences. The trial court judge held that these provisions exclude from change in ownership those transfers of real property interests between or among co-owners that result in a change in the method of holding title but do not result in a change in the proportional ownership interests of the co-owners. The exclusion relied upon by the court, however, does not apply to the series of transfers in and out of the joint tenancy at issue herein, which ultimately resulted in the termination of the joint tenancy and the transfer of a 100 percent interest in the real property to Robert. (See Property Tax Rule 462.040, *Change in Ownership – Joint Tenancies*.)

---

<sup>4</sup> See Rev. & Tax. Code, §§ 62, 63, and 65, which provide exclusions to the definition of change in ownership, all of which are inapplicable here.

In summary, the Superior Court's interpretation of the applicable joint tenancy statutes and rule would allow a series of transfers of real property to be excluded from reassessment as long as the original owner first transfers the property to himself and one or more third parties as joint tenants, which is clearly beyond the scope of the statutory exclusions authorized by the Legislature. If allowed to stand, this case not only would overturn longstanding Board guidance regarding the proper assessment of joint tenancies and violate well-established statutes and rules, but also would create an exclusion that could prevent the reassessment of otherwise reassessable real property in California on a large scale.

For the above reasons, the Legal Department requests that the Board approve filing an *amicus* brief in this case in support of the Assessor. Should you require additional information or have any questions, please contact Assistant Chief Counsel Robert Lambert at (916) 322-0437 or Tax Counsel IV Richard Moon at (949) 440-3486.

Approved:

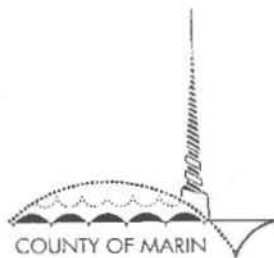


Kristine Cazadd  
Executive Director

RF:RWL:th

Attachment: Request for Authorization to File *Amicus Curiae* Brief

cc: Ms. Kristine Cazadd	MIC: 73
Mr. David Gau	MIC: 63
Mr. Dean Kinnee	MIC: 64
Mr. Robert Lambert	MIC: 82
Ms. Christine Bisauta	MIC: 82
Mr. Richard Moon	MIC: 82
Mr. Daniel Paul	MIC: 82



Patrick K. Faulkner  
COUNTY COUNSEL

March 27, 2012

Jack F. Govi  
ASSISTANT COUNTY COUNSEL

Dorothy R. Jones  
Mori-Ann G. Rivers  
Renee Giacomini Brewer  
David L. Zaltsman  
Michele Keno  
Nancy Stuart Grisham  
Jennifer M. W. Vuillermet  
Patrick M. K. Richardson  
Thomas F. Lyons  
Stephen R. Raab  
James G. Flageollet  
Steven M. Perl  
Sheila Shah Lichtblau  
Edward J. Kiernan  
Jessica Mills Sutherland  
DEPUTIES

Jeanine Michaels  
ADMINISTRATIVE ASSISTANT

Marin County Civic Center  
3501 Civic Center Drive  
Suite 275  
San Rafael, CA 94903  
415 473 6117 T  
415 473 3796 F  
415 473 2226 TTY

Robert Lambert  
State Board of Equalization  
Tax Counsel, Legal Department  
450 N Street  
Sacramento, CA 95814

Re: Filing of Amicus Brief in the matter of Thayer vs. Marin County  
Assessment Appeals Board.  
Appellate Case No.: A134340, First Appellate District, Division One

Dear Mr. Lambert:

I am a deputy county counsel at the County of Marin and I write to formally request amicus support for the matter of *Thayer v. Marin County Assessment Appeals Board*, Appellate Case No.: A134340. Our assessor Rich Benson suggested that I contact you regarding a request for an amicus support. The issue involves whether an "other than original transferor" can avoid a change of ownership when he severs his joint tenancy in favor of a tenancy in common.

We are appealing a decision by the Marin Superior Court which upheld an AAB finding that a party was excluded from a change of ownership assessment when he severed the joint tenancy in favor of a tenancy in common. We would like amicus support on this issue and our assessor Rich Benson has brought this issue to the attention of other assessors and SBE who agree the AAB determination was wrong.

The Revenue & Taxation Code appears to be a little muddled on this issue, but supports an interpretation that a severance of a joint tenancy in favor of a tenancy in common is a change of ownership. Section 61(e) plainly states that the termination of a joint tenancy is a change in ownership except as provided in 62(f), 63 and 65. Section 65 states that a joint tenancy is a change of ownership except as provided in section 62. The respondent relied on the language in 65 which referenced 62, and then 62(a) which states that a transfer between co-owners which results in the change in the method of holding title but not the proportional interests is not a change of ownership.

LETTER TO BOB  
LAMBERT BOARD OF  
EQUALIZATION  
MARCH 27, 2012

PG. 2 OF 2

Our AAB and superior court found the severance was a non-assessable event pursuant to 62(a), notwithstanding 61(e). In doing so, the superior court ignored SBE property tax annotation 220.0298, explaining that the severance of a joint tenancy under these circumstances is a change in ownership.

Our assessor Rich Benson and other assessors are very concerned that the AAB decision has already alerted property attorneys in this area about how to avoid change in ownership assessments, and if allowed to stand, it will have far reaching consequences as it will allow people to avoid assessments where the law does not appear to allow for this. Based on conversations we have had with the SBE, we believe the SBE supports our interpretation. Additionally, I have spoken with deputy county counsel attorneys Walter de Llorell and Carol Ruwart.

At the present time, the opening brief is due on April 4, 2012 and according to statute, the response brief is due 30 days after. However, we will be filing a request for a 30 day extension tomorrow.

Kindly let me know if there is additional information that I may provide you with to assist in your decision.

Very truly yours,



Sheila S. Lichtblau  
Deputy County Counsel

cc: Rich Benson (via e-mail)