



STATE OF CALIFORNIA

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March 10, 1992

Dear Mr. _____:

This is in response to your letter to Mr. Richard Ochsner of February 10, 1992 in which you request our opinion as to whether a change in ownership for property tax purposes will occur as a result of the following facts and proposed transactions set forth in your letter.

With current mortgage rates for residential property declining for individual owner occupied properties, your client desires to refinance her principal residence. To refinance her principal residence, lenders require an additional 1-2% on the interest rate if the property title is not in an individual's name. There will also be additional closing costs if the title is in an entity rather than an individual.

Normally, refinancing does not trigger a change in ownership. However, since the original title was inadvertently placed in a general partnership when the subject property was purchased April 4, 1986, title must be transferred from the partnership to a partner or partners in order to provide more favorable terms. Your client is a 60% general partner and her two sons are each 20% general partners in the partnership which holds title to the property.

Your client has resided at the subject property as her principal residence since the original date of purchase. She is an unmarried individual with California residency. In timely filing all prior Federal and California individual income tax returns, your client has reflected the subject property as her principal residence. For income tax purposes, all interest and property tax deductions associated with the ownership have been claimed by your client and not the general partnership. She is obligated to make all principal and interest payments on the debt against the subject property.

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In transferring title to the subject property from the general partnership to your client, you ask whether a change of ownership will occur thereby subjecting the property to a reappraisal if the following steps are taken:

1. The real property is transferred from the partnership to the partners as tenants in common with the same proportional interests or ownership rights.
2. Immediately after the transfer and refinance, both sons transfer their proportional interests in the real property to their mother thereby making her 100% owner of the subject real property.

As you know, Revenue and Taxation Code* Section 60 defines "change in ownership" as

"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."

You first contend that no change in ownership would occur under the foregoing definition because your client has had the beneficial use of the property since the property was acquired and the proposed transfers, therefore, would not include the beneficial use of the property.

With respect to who is the beneficial owner of the property, Evidence Code Section 662 provides that the owner of the legal title to property is presumed to own the full beneficial title and that such presumption may be rebutted only by clear and convincing proof.

In our view, the assessor is best suited to make the determination of whether the taxpayer has presented clear and convincing evidence that the beneficial owner of real property is someone other than the owner of the legal title.

Alternatively, even if the presumption of Evidence Code Section 662 is not rebutted, the first proposed transfer of the subject property from the partnership to your client as to an undivided 60 percent interest and to her two sons each as to an undivided 20% interest all as tenants in common would be excluded from change in ownership by section 62(a)(2) as merely a change in the method of holding title to the real property and in which

* All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

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the proportional ownership interests of the parties remain the same after the transfer. This, of course, assumes that each of the three has a corresponding interest in both the capital and profits of the partnership.

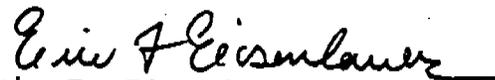
The second proposed transfer of a 20% undivided interest in the real property from each son to your client would constitute a change in ownership of 40% of the property but could be excluded under the provisions of section 63.1 if the limitations and requirements of that section are satisfied.

Further, since the first proposed transfer clearly would be for the purpose of permitting an immediate retransfer between children and their parent which would qualify for the exclusion from change in ownership provided by section 63.1, such transfer in our view, should be fully recognized and not be ignored, disregarded or given less than full recognition under a substance over form or step-transaction doctrine (§2 of Stats. 1987, Ch. 48).

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Eric F. Eisenlauer
Senior Tax Counsel

EFE:ta

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cc: Mr. John W. Hagerty
Mr. Verne Walton
Mr. _____

County Assessor's Office