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February 27, 2001

Honorable Dick Frank, Assessor
County of San Luis Obispo
County Government Center, Room 100
San Luis Obispo, CA 93408

VIA FACSIMILE
ORIGINAL TO FOLLOW

Attention: Barbara Edginton, Assessment Analyst II

RE: *Interpretation of Subdivision (b) of Revenue and Taxation Code Section 532*

Dear Ms. Edginton:

This is in reply to your January 25, 2001 telephone inquiry regarding the interpretation of subdivision (b) of Revenue and Taxation Code section 532.¹ Your inquiry specifically focused upon the interpretation of the phrase "unrecorded change in ownership or change in control" and the relationship of this concept when real property transfers after a death.

As discussed further below, it is our opinion that the phrase "unrecorded change in ownership or change in control" in subdivision (b) of section 532 refers solely to deeds or other documents reflecting a change in the recorded title to property and does not refer to change in ownership statements. Subdivision (b) of section 532 provides an assessor with timeframes for making escape assessments, which are appropriate based upon the information available to and in the hands of the assessor. The statute of limitation periods for making arbitrary and escape assessments are based upon both the filing of documents of title and the filing of change in ownership statements.

Factual Background

It is our understanding that you have posed the following scenarios for our review:

Scenario #1

1. An individual (trustor) establishes a revocable trust, with the individual and a friend as the co-trustees of the trust. The trustor dies in 1986 (prior

¹ Unless otherwise indicated, all statutory references are to the Revenue and Taxation Code.

to the passage of Proposition 58) and the trust becomes irrevocable. The friend remains as the sole trustee and the trust continues as a life estate to the trustor's grandchildren and then, upon the death of the last grandchild, the trust estate is to be distributed to a great grandson.

2. The county where the real property is located is never notified of the trustor's 1986 death and the death occurred in another county.
3. Assuming that vesting to the grandchildren of the life estate transferred the beneficial interest in the real property to them at the time of the trustor's death, a change in ownership occurred.

Scenario #2

1. Husband (H) and Wife (W) are the trustors and trustees of a revocable trust. H and W have both died and a child (C1) is the successor trustee. Upon winding down the administration of the trust estate, the trust assets will be distributed to the children of H and W. The trust includes real property in H's and W's county of residency and real property in the adjoining county. Death certificates were recorded in the recorder's office in the county of residency.
2. C1 records Affidavits of Death of Trustee for each of the parcels of real property held by the trust in H's and W's county of residency, so that C1 can be named as the successor trustee.
3. Vesting of the trust estate in the children, who are the sole present beneficiaries, occurs on the date of death of the surviving spouse (the surviving original trustee).
4. Would the recording of the Affidavits of Death of Trustee qualify as the "deed or other document evidencing a change in ownership," such that only the 4-year statute would apply?
5. If vesting does occur at the date of death of the surviving spouse and no Affidavits are recorded for the real property held by the trust in the adjoining county, would there be an unrecorded change in ownership for the property in this county?

Scenario #3

1. A Husband and Wife and an Aunt purchased property in 1976 as joint tenants. The Aunt died in 1986 and an Affidavit of Death of Joint Tenant was never recorded.

2. This is a situation in which it seems apparent that a recording of an Affidavit should have occurred. Therefore, would the unrecorded change in ownership fall under the 8-year statute in subdivision (b) of section 532?

Law and Analysis

Section 532 provides in part that

- (a) Except as provided in subdivision (b), any assessment made pursuant to either Article 3 (commencing with Section 501) or this article shall be made within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed.
- (b) (1) . . .
 - (2) Any assessment resulting from an unrecorded change in ownership or change in control for which either a change in ownership statement, as required by Section 480 or a preliminary change in ownership report, as required by Section 480.3, is not filed with respect to the event giving rise to the escape assessment or underassessment shall be made within eight years after July 1 of the assessment year in which the property escaped taxation or was underassessed. For purposes of this paragraph, an "unrecorded change in ownership or change in control" means a deed or other document evidencing a change in ownership that was not filed with the county recorder's office at the time the event took place.
 - (3) Notwithstanding paragraphs (1) and (2), in the case where property has escaped taxation, in whole or in part, or has been underassessed, following a change in ownership and either the penalty provided for in Section 503 must be added or a change in ownership statement, as required by Section 480.1 or 480.2 was not filed with respect to the event giving rise to the escape assessment or underassessment, an escape assessment shall be made for each year in which the property escaped taxation or was underassessed.
- (c) . . .

The phrase "unrecorded change in ownership or change in control" in subdivision (b) of section 532 refers solely to deeds or other documents reflecting a change in the recorded title to property and does not refer to change in ownership statements. There is and always has been a distinction in the Revenue and Taxation Code between the *recording* of documents of title and the *filing* of change in ownership statements. The basic purpose of the requirement for filing change in ownership statements is to give notice and information to an assessor. It has always been understood, however, that the recording of documents of title is also a form of notice to the assessor, since assessors

regularly receive recorded information from the recorder's office.² Accordingly, the property tax consequences for failing to file a change in ownership statement are *less* severe if documents of title have been recorded and *more* severe if documents of title have not been recorded.

While the Revenue and Taxation Code does not contain any requirements regarding the recording of documents of title, it does require the filing of change in ownership statements. Sections 480, 480.1, and 480.2 require the filing of change in ownership statements and section 480.3 provides for the filing of preliminary change of ownership reports. Additionally, section 482 provides for the imposition of penalties if change in ownership statements are not filed, and Articles 3 and 4 of Chapter 3 of Part 2 provide for the enrollment of escape and supplemental assessments when changes in ownership of property or changes in control of entities have been identified. Finally, section 532 provides for the statute of limitations for making arbitrary and escape assessments.

With respect to escape assessments resulting from changes in ownership for which change in ownership statements have not been filed as required, the statute of limitations for instances in which documents of title were not recorded is different from the statute of limitations for instances in which documents of title were recorded. Furthermore, the statute of limitations for the failure to file a change in ownership statement pursuant to section 480 is different from the statute of limitations for the failure to file a change in ownership statement pursuant to sections 480.1 and 480.2. The number of years for which the statute of limitations is open for an escape assessment under section 532 follows a logical progression, based upon how much information is in the hands of an assessor—the less information that the assessor holds, the longer the statute of limitations period open for the assessor to make an escape assessment.

For example, subdivision (a) of section 532 provides that if documents of title were recorded but a change in ownership statement was not filed pursuant to section 480, the statute of limitations open for escape assessments is limited to four years. On the other hand, subdivision (b)(2) of section 532 provides that if documents of title were not recorded and a change in ownership statement was also not filed pursuant to section 480, the statute of limitations open for escape assessments would be eight years. Regarding the change in control of entities, subdivision (b)(3) of section 532 provides that if a change in ownership statement is not filed pursuant to sections 480.1 or 480.2, there is no statute of limitations for making escape assessments, even if a deed or other document regarding title has been recorded. Under subdivision (b)(3) of section 532 then, an assessor may enroll escape assessments for each and every year that property held by the entity was underassessed or has escaped taxation.

² Revenue and Taxation Code section 255.7 provides that "Whenever a change in ownership is recorded in the county recorder's office, the county recorder shall provide the assessor with a copy of the transfer of ownership document as soon as possible."

Subdivision (b) of section 532 provides an assessor with timeframes for making escape assessments, which are appropriate based upon the information available to and in the hands of the assessor. The bottom line of section 532 is this: the statute of limitation periods for making arbitrary and escape assessments are based upon both the filing of documents of title and the filing of change in ownership statements. In other words, the provisions of section 532 are not based solely upon whether or not a change in ownership statement has been filed, but upon whether or not a change in ownership statement has been filed in conjunction with whether or not a deed or other document evidencing a change in ownership of property has been recorded.

Based upon these principles then, we will now address each of the scenarios you posed. In Scenario #1, while the recording of a deed or other document was not required upon the death of the trustor (a co-trustee) for the transfer of the beneficial interest in the property and the vesting to the grandchildren to occur, the co-trustee could have recorded an Affidavit of Death of Trustee for each of the properties held by the trust. Moreover, the co-trustee should have filed a change in ownership statement for each of the properties held by the trust at the time of the trustor's death. However, since the co-trustee neither recorded a deed or other document nor filed a change in ownership statement at the time of the trustor's death, subdivision (b) of section 532 would provide for the assessor to levy eight years of escape assessments, commencing with July 1 of the assessment year in which the property escaped assessment or was underassessed. Under the facts of this scenario (i.e., prior to the passage of Proposition 58), there was no exclusion available at the time for transfers to grandchildren.

Regarding Scenario #2, the recording of Affidavits of Death of Trustee would fall under the definition of recording a "deed or other document." As a result, in the county in which Affidavits were recorded, the four year statute of limitations would apply. In the adjoining county where Affidavits were not recorded, however, the eight year statute of limitations would apply. Regarding Scenario #3, the recording of an Affidavit of Death of Joint Tenant would also fall under the definition of recording a "deed or other document." As a result, the eight year statute of limitations would apply.

Regarding the recording of Affidavits of Death of Trustee and Affidavits of Death of Joint Tenant, subdivision (a) of Probate Code section 201 states

If title to real property is affected by the death of a person, any person may record in the county in which the property is located any of the following documents establishing the fact of the death:

- (a) An affidavit of death executed by a person having knowledge of the facts. The affidavit shall include a particular description of the real property and an attested or certified copy of a record of the death made and filed in a designated public office as required by law.

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In situations of a death then, an executor or a trustee or a surviving joint tenant, for example, should record an affidavit of death for real property affected by a death. In other words, an affidavit of death should be recorded upon the death of an owner of real property to clear title on the property. Moreover, to clear title for all real property in which the decedent owned an interest, an affidavit should be recorded for each and every property owned. In so doing, the affidavit of death acts as a "deed or other document," putting an assessor on notice that a change in ownership for a particular property may have occurred.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

/s/ Anthony Epolite

Anthony Epolite
Tax Counsel

ASE:tr

prop/prec/escapeas/01/01ase

cc: Mr. Richard Johnson, MIC:63
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