

Memorandum

To : Mr. Gordon P. Adelman

Date : October 29, 1985

From : Barbara G. Elbrecht

Subject: Correspondence of (Re:)

This is in response to your memorandum of October 3, 1985 directed to Mr. Richard Ochsner wherein you request a legal opinion regarding the application of Revenue and Taxation Code, section 62(n). Attached to your memorandum is correspondence from Mr. _____, attorney for Mr. _____, in which Mr. _____ asserts that a transfer of property to Mr. B should be excluded from the change in ownership provisions by section 62(n). The following statement of facts is taken from Mr. H's letter and the accompanying documents.

Mr. B is a quadriplegic, who has been totally disabled since 1954. Mr. B requires in-home supportive care of at least 20 hours per week to provide the services set forth in subdivision (e) of Section 12304 of the Welfare and Institutions Code. Mr. B and his mother G owned in joint tenancy the home in which Mr. B as lived since 1962. Mrs. B died on August 2, 1984; for at least the last three years prior to her death, Mrs. B, a victim of Alzheimer's disease, was unable to live in the family home but was instead a resident of _____ Hospital. All of Mrs. B's income was used to meet her medical expenses.

Upon the death of Mrs. B, the assessor reappraised Mrs. B's joint tenancy interest in the property which passed to Mr. B under the right of survivorship. Mr. B applied for reversal of that reassessment under the provisions of section 62(n). The assessor denied the application upon the advice of Assessment Standards because the joint income of B and _____ exceeded \$20,000, the limit set forth in section 62(n).

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Section 62(n) states that a change in ownership shall not include:

Any transfer of an eligible dwelling unit, whether by will, devise, or inheritance, from a parent or parents to a child or children, or from a guardian or guardians to a ward or wards, if the child, children, ward or wards have been disabled, as provided in subdivision (e) of Section 12304 of the Welfare and Institutions Code, for at least five years preceding the transfer and if the child, children, ward or wards have adjusted gross income which, when combined with the adjusted gross income of a spouse or spouses, parent or parents, and child or children, does not exceed twenty thousand dollars (\$20,000) in the year in which the transfer occurs. As used in this subdivision, "child" or "ward" includes a minor or an adult. As used in this subdivision, "eligible dwelling unit" means the dwelling unit which was the principal place of residence of the child or children, or ward or wards for at least five years preceding the transfer and remains the principal place of residence of the child or children, or ward or wards after the transfer. Any transferee whose property was reassessed in contravention of the provisions of this subdivision for the 1984-85 assessment year shall obtain a reversal of that reassessment upon application to the county assessor of the county in which the property is located. Application by the transferee shall be made to the assessor no later than 30 days after the later of either the transferee's receipt of notice of reassessment pursuant to Section 75.31 or the end of the 1984-85 fiscal year.

Section 62(n) sets forth four criteria which must be met before a transfer can be excluded from the change in ownership provisions under this section. First, the transfer must be from a parent to a disabled child whose disability meets the test set forth in subdivision (e) of Section 12304 of the Welfare and Institutions Code. Second, the child must be disabled for at least five years preceding the transfer. Third, the child must have an adjusted gross income which, when combined with the adjusted gross income of any spouse, parent, or child, does not exceed \$20,000 in the year the transfer occurred. Fourth, the dwelling unit must have been the principal place of residence of the child for at least five years preceding the transfer and must remain so after the transfer.

The transfer of G's joint tenancy interest to B clearly fulfills three of these four requirements. The transfer is from a parent, G, to a child, B, whose disability falls within the definition of subsection (e) of Section 12304 of the Welfare and Institutions Code, as described above. Moreover, the second requirement is met because B has been disabled for over 30 years. The fourth requirement is satisfied by his continual residence on the property since 1962. However, the combined income of B and G exceeds the \$20,000 adjusted gross income limitation and appears at first glance to preclude this transfer from qualifying under section 62(n).

Section 62(n) specifies that a child must have an adjusted gross income which, when combined with the adjusted gross income of the parent does not exceed \$20,000 in the year the transfer occurred. The B transfer raises the question of whether the income of child and parent should be combined when the child and parent are not residing in the same household.

The language used in the statute does not provide a direct answer to this question. It is therefore necessary to look to the legislative history of the statute to see if this issue was addressed by the Legislature. Chapter 1010 (AB 2890) of the 1984 Statutes, sponsored by Polio Survivors Association, was enacted "to prevent an assessment increase when a home is transferred to a disabled person who has lived and continues to live in the home. If a reassessment occurs, some disabled living with their parents may not have the income to stay in the home. The objective of this bill is to keep the disabled in these dwellings to prevent institutionalization." (Analysis, Senate Committee on Revenue and Taxation, 7/5/84.) The bill as originally introduced set an income limitation of \$20,000 adjusted gross income for the disabled child. The Department of Finance opposed the bill because it believed adjusted gross income is not a true reflection of income since it does not include certain entitlement benefits and because the \$20,000 limit was upon the child's rather than the whole household's income. Finance proposed an income limitation of \$20,000 for gross household income. The final version of the bill retained adjusted gross income as the measure of income but combined the income of parent and child in defining the \$20,000 limitation. This appears to be a compromise position, adopting the position of Finance that all income in the household be combined, but retaining the adjusted gross income standard. Moreover, the Senate Revenue and Taxation Committee's analysis of this bill speaks of "disabled living

October 29, 1985

with their parents" (emphasis added). Although our conclusion is not free of doubt, it appears that the Legislature intended to combine the income of the parent and the child only if they were both living in the same household.

Based on this interpretation of section 62(n), it is our opinion that the income of B should not be combined with that of G because they did not reside in the same household. Since the adjusted gross income of B for the year of transfer is below \$20,000, all four elements of section 62(n) are satisfied. Therefore, the transfer of G's joint tenancy interest to B should be excluded from the change in ownership provisions.

Barrie

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cc: Mr. Robert H. Gustafson
Mr. Verne Walton