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Executive Director

March 15, 2006

Re: Change in Ownership – Estate for Years

Dear Mr. _____ :

This is in response to your letter dated October 10, 2005, in which you request that we confirm that: (1) under Property Tax Rule 462.060, subdivision (b), the creation of a term for 34 years upon the death of the trustor will not be a change in ownership; and, (2) under Revenue and Taxation Code¹ section 63.1, there will be no change in ownership when the property is distributed to the trustor's children at the end of the term for years. For the reasons explained below, for each item, we concur that there is no change in ownership.

Facts Presented

Your client wishes to create an estate for years giving Beneficiary X (who is not a spouse or a registered domestic partner) the right to use and occupy his principal residence for a period of 34 years after his death. At the conclusion of the term for years, the property will be distributed to a Children's Trust for distribution to your client's children outright. You have enclosed a copy of the article of the revocable trust with the drafted terms for our review.

Law and Analysis

“Change in ownership” is defined by section 60 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.” There is excluded from the definition of change in ownership any transfer of real property that is the principal residence of the eligible transferor and the first million dollars of full cash value of all other real property of each eligible transferor for transfers between parents and their children. (Rev. & Tax. Code, § 63.1, subd. (a).)

Under the life estate exclusion of section 62, subdivision (e), if the transfer is to the transferor or the transferor's spouse, then transfer of an estate for years or an estate for life does not constitute a change in ownership; that is, until the termination of such an estate. Under section 61, subdivision (g), any vesting of the right to possession or enjoyment of a remainder interest that occurs upon the termination of a life estate or other similar precedent property

¹ All section references are to the Revenue and Taxation Code, unless otherwise noted.

interest, except as provided in subdivision (d) of section 62 and in section 63, is a change in ownership.

Property Tax Rule (Rule) 462.060, subdivision (b), which interprets sections 61, subdivision (g) and 62, subdivision (e), expressly states that:

The creation of an estate for years for a term of 35 years or more in real property is a change in ownership at the time of transfer unless the instrument creating the estate for years reserves such estate in the transferor or the transferor's spouse. However, the subsequent transfer of such an estate for years by the transferor or the transferor's spouse to a third party is a change in ownership. Upon the termination of a reserved estate for years for any term, the vesting of the right to possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership. The creation or transfer of an estate for years for less than 35 years is not a change in ownership.

Rule 462.060 makes it clear that the creation of the estate for years in Beneficiary X for a term of 34 years at the death of the trustor would not constitute a change in ownership of the property. Beneficiary X does not receive a present beneficial interest in the property the value of which is substantially equal to the value of the fee interest.

However, the termination of the estate for years and the vesting of ownership in someone other than the transferor or transferor's spouse is a change in ownership, unless otherwise excluded from change in ownership. In this case, there is no change in ownership upon the vesting of full ownership interest in the children because it is a transfer to which the parent-child exclusion pursuant to section 63.1 applies, if a timely claim has been filed as required by law.

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/ Shirley Johnson

Shirley Johnson
Tax Counsel

SJJ:jlh

Prec/Life Estate/06/05-727.SJJ.doc

cc: Honorable
California Assessors' Association

Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70