



STATE BOARD OF EQUALIZATION

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August 29, 1995

Dear Mr. S:

This is in response to your letter of March 6, 1995 requesting our opinion concerning a parent/child exclusion from change in ownership for property tax purposes.

You stated in your letter that the property was owned by J. S. in June 1986. On April 22, 1988 J. S. sold the property to his son, W. J. S., reserving a life estate for himself. On May 24, 1991 W. J. S. added his wife, L. S., to the deed as community property in the remainder interest. W. J. and L. S. divorced in 1992. L. S. recorded a name correction deed changing her name to L. B. S. on March 5, 1993. On the same day, March 5, 1993, W. J. S. deeded his remainder interest to L. S., his ex-wife. J. S. died on September 2, 1994; this terminated his life estate and caused L. B. S.'s interest to be possessory. Ms. S. filed for a Proposition 58 parent/child exclusion. You denied the exclusion.

Ms. S. contends that she has owned the property since May 24, 1991 when her ex-husband added her to his remainder interest during their marriage and should be allowed to claim the exclusion at this time. She also contends that she had purchased the property from J. S. and he was being allowed to live on the property until his death.

We agree with your decision to deny the Proposition 58 parent /child exclusion for the following reasons.

Section 60 of the Revenue and Taxation Code (all statutory references are to the Revenue and Taxation Code unless otherwise indicated) states that:

“A ‘change in ownership’ means 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.”

Subdivision (e) of Section 62 provides that a change in ownership shall not include:

“Any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life; however, the termination of such an estate for years or estate for life shall constitute a change in ownership, except as provided in subdivision (d) and in Section 63.”

Subdivision (d) makes reference to trusts which is not applicable in this case. Section 63 discusses interspousal transfers and reads in part, that:

“... a change in ownership shall not include any interspousal transfer, including, but not limited to transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation . . .”

Property Tax Rule 462.060, subdivision (a) interprets Section 62(e) and provides, that:

“The creation of a life estate in real property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor’s spouse. However, the subsequent transfer of such a life estate by the transferor or the transferor’s spouse to a third party is a change in ownership. Upon termination of such a reserved life estate, the vesting of a right to possession or enjoyment of a remainderman (other than the transferor or the transferor’s spouse) is a change in ownership.”

Revenue and Taxation Code Section 63.1 (a) reads, in part, as follows:

“Notwithstanding any other provision of this chapter, a change in ownership shall not include . . . the purchase or transfer of real property which is the principal residence of an eligible transferor in the case of a purchase or transfer between parents and their children . . . or “The purchase or transfer of the first one million dollars (\$1,000,000) of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children.”

Section 63.1 (c)(1) defines “purchase or transfer between parents and their children” as “a transfer from a parent or parents to a child or children of the parents or parents or a transfer from a child or children to a parent or parents of the child or children.” This section goes on to define “children” as any child born of the parent or parents, any stepchild of the parent or parents, any son-in-law or daughter-in-law of the parent or parents, or any child adopted by the parent or parents. Subsection (C) is specific in defining son-in-law or daughter-in-law of the parent or parents and states that the relationship shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce.

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In your situation, Mr. J. S. sold the property to his son, Mr. W. S., reserving a life estate. Section 62(e) provides that a transfer in which the transferor reserves an estate for life is not a change in ownership. Therefore, for property tax purposes there was no change in ownership when Mr. J. S. sold the property to his son. All that Mr. W. S. has is a future interest in the property. Transfer of a future interest is not subject to change in ownership for property tax purposes. Thus, any transfer of the future interest, such as the transfer between Mr. W. S. and Ms. L. S., has no bearing on the change in ownership of the property for property tax purposes.

Upon the death of Mr. J. S. the life estate was terminated and the present interest was transferred to Ms. L. S., the holder of the remainder interest. Thus, a change in ownership for property tax purposes occurred unless the exclusion provided in Section 62(d) and Section 63 applies. Section 62(d) is not applicable since the transfer did not involve a trust. The exclusion provided in Section 63 is also not applicable since this was not a transfer between spouses. The transfer was between Mr. J. S. and Ms. L. S., former daughter-in-law.

In addition, the exclusion provided in Section 63.1, the parent/child exclusion, would also not apply because this was not a transfer between parent and child. Ms. S. was not a daughter-in-law of Mr. S. at the time of the transfer, i.e., the death of Mr. J. S. It is the relationship as of the date of the change in ownership for property tax purposes that is relevant to the exclusion.

I hope this information is helpful to you. Please bear in mind that the conclusions in this letter are advisory only and are not binding on any taxpayer or county official. If you have further questions on this matter, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

Charles G. Knudsen
Principal Property Appraiser
Assessment Standards Division

CGK:kmc

(Prepared by Rita Odom)

bc: Mr. Richard Ochsner