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No. 80/25

February 19, 1980

TO COUNTY ASSESSORS:

CONCEPTS IN CHANGE IN OWNERSHIP

Assembly Bill 1488 redefines "change in ownership" as follows (Section 60):

"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 fee interest."

This bill and Assembly Bill 1019, by the addition of certain sections to the Revenue and Taxation Code, make substantial changes regarding not only when an appraisal is, or is not, called for but also what is, or is not, appraised. They call for appraisal of the property or portion thereof transferred (e.g., the transfer of an undivided 1/4 interest in a tenancy in common would require an appraisal of the interest transferred, assuming the transfer is not otherwise excluded).

A change in ownership (exclusions noted) includes the following.

A. POSSESSORY INTERESTS Section 61(b)

The creation, renewal, sublease, or assignment of a taxable possessory interest in tax exempt real property for any term. Note that a change in ownership occurs regardless of the length of the term. *

B. LEASES Section 61(c)

- (1) The creation of a leasehold interest in taxable real property for a term of 35 years or more (including written renewal options). *
- (2) The termination of a leasehold interest in taxable real property (where the property leased returns to the lessor) which had an original term of 35 years or more (including written renewal options). *
- (3) Any transfer of a leasehold interest having a remaining term of 35 years or more (including written renewal options). *
- (4) The transfer (sale) of the lessor's interest in taxable real property subject to a lease with a remaining term (including written renewal options) of less than 35 years. *

- (5) When real property subject to a lease changes ownership (as in 1 through 4 above), the entire property is reappraised including leasehold and leased fee.

* Only that portion of a property subject to such lease or transfer shall be considered to have undergone a change in ownership. For instance, a qualifying lease of one shop in a shopping center requires reappraisal of only the shop.

EXCLUSIONS Section 62(g)

- (1) The transfer (sale) of the lessor's interest in taxable real property subject to a lease with a remaining term of 35 years or more (including renewal options) would not be a change in ownership.
- (2) The transfer of a leasehold interest, to other than the lessor, in taxable real property with a remaining term of less than 35 years would not be a change in ownership.

C. MINERAL_RIGHTS Section 61(a)

The creation, renewal, sublease, assignment, or other transfer of the right to produce or extract oil, gas, or other minerals for so long as they can be produced or extracted in paying quantities. The balance of the property, other than mineral rights, shall not be reappraised pursuant to this section. The "term" to be considered is "for so long as they can be produced or extracted in paying quantities."

D. CONDOMINIUMS Section 65(c)

Section 65(c) states "If a unit or lot within a cooperative housing corporation, community apartment project, condominium, planned unit development, shopping center, industrial park, or other residential, commercial, or industrial land subdivision complex with common areas or facilities is purchased or changes ownership, then only the unit or lot transferred and the share in the common area reserved as an appurtenance of such unit or lot shall be reappraised."

This section also provides that when a transfer of one of the above mentioned units results in a reappraisal and an increase in taxes, such increase in taxes shall be applied by the property owner to the new owner of the unit transferred.

E. PARTNERSHIPS Section 61(i)

The transfer of any interest in real property between a partnership and a partner or any other person is a change in ownership. A partnership is treated as a legal entity owning real property; partners own partnership interests only (for purposes of reappraisal) and not any specific real property.

EXCLUSION Section 64(a)

Generally, the addition or deletion of partners is not a change in ownership since all that transfers is the ownership interest in the partnership and not the ownership interest in real property. An exception to this happens when the deletion leaves only one person; in this case, no partnership exists. If there is no continuing clause in the partnership agreement, the addition and deletion of partners creates a new entity and the real property would transfer from the old partnership entity to the new one.

F. CORPORATIONS Section 64(a)(c)

- (1) Generally, the transfer of corporate stock does not constitute a change in ownership since the transfer is of stock in the legal entity owning the real property. However, a change in ownership does occur when a non-affiliated corporation, partnership, or other entity obtains control of more than 50 percent of the voting stock, exclusive of any shares owned by directors, of another corporation. This is a change in ownership of the real property owned by the corporation in which the controlling interest is obtained, and the change is effective whenever control is obtained.

EXAMPLE: Corporation A purchased 49 percent of the stock in Corporation B one year and 2 percent the following year. A change in ownership occurs when the 2 percent interest transfers. (Corporation A originally owned no stock in Corporation B.) This change in ownership requires reappraisal of the entire property.

- (2) A change in ownership also occurs upon the transfer of stock in a cooperative housing corporation, as defined in Section 17265 of the Revenue and Taxation Code, vested with legal title to real property which conveys to the transferee the exclusive right to occupancy and possession of such real property or portion thereof. Only the unit transferred would be appraised.

EXCLUSIONS Section 64(b)(1)(2)

- (1) Any transfer of real property among members of an affiliated group, including corporate reorganization, shall not be a change in ownership.

An "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if:

- (a) One hundred percent of the voting stock, excluding director-owned shares, of each of the corporations, except the parent corporation, is owned by one or more of the other corporations; and
 - (b) The common parent corporation owns, directly, 100 percent of the voting stock, excluding director-owned shares, of at least one of the corporations.
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- (2) Section 62(i) of the California Revenue and Taxation Code excludes from being a change in ownership the transfer of stock or membership certificate in a housing cooperative financed under one mortgage provided such mortgage was insured under Section 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act as amended or financed or assisted pursuant to Section 514, 515, or 516 of the National Housing Act of 1949 or Section 202 of the Housing Act of 1959, or was financed by a direct loan from the California Housing Finance Agency, and provided that the regulatory and occupancy agreements were approved by the governmental lender or insurer, and provided that the transfer is to the housing cooperative or to a person or family qualifying for purchase by reason of limited income. Any transfer to a person or family not qualifying for purchase by reason of limited income shall be a change in ownership causing reappraisal.

G. TRUSTS Section 61(f)

- (1) A change in ownership occurs upon the vesting of the right to possession or enjoyment of a remainder or reversionary interest occurring upon the termination of a precedent property interest.
- (2) A change in ownership also occurs when any interest in real property vests in persons other than the trustor (or trustor's spouse) when a revocable trust becomes irrevocable.
- (3) The creation or termination of a trust in which the trustor retains the reversion and in which the interests of others exceeds 12 years duration is a change in ownership. A change occurs both upon creation and upon termination.
- (4) The creation of an irrevocable trust in which the transferor is not a present beneficiary and in which the transferor does not retain the reversion is a change in ownership. (Similarly, the termination of such a trust is also a change in ownership.)

EXAMPLE: John Smith grants real property to an irrevocable trust. John Doe is the present beneficiary of the trust and Jane Citizen is the future beneficiary. A change in ownership occurs when the property is transferred to the trust and when the trust terminates and the property transfers to Jane Citizen.

EXCLUSIONS Section 62(d)

A change in ownership does not occur if:

- (1) The trust is revocable.
- (2) The transferor or the transferor's spouse is a present beneficiary of the trust.
- (3) The transfer is interspousal.

- (4) The transferor retains the reversion and the beneficial interests of others does not exceed 12 years.
- (5) The transfer is from one trust to another and meets any of the requirements of 1 through 4.
- (6) A transfer reserving a life estate or estate for years to the transferor or the transferor's spouse.

H. LIFE ESTATE Section 61(f)

- (1) A change in ownership occurs upon the vesting of the right to possession or enjoyment of a remainder or reversionary interest occurring upon the termination of a life estate.
- (2) If a property owner "reserves" a life estate for himself and/or his spouse, there is no change in ownership upon the reservation of the life estate. If, however, a property owner "grants" a life estate to someone other than his/her spouse, a change in ownership does occur. A change in ownership will also occur when the life estate terminates.

EXCLUSION Section 62(e)

A transfer reserving a life estate or estate for years to the transferor or the transferor's spouse is not a change in ownership.

I. TENANCY IN COMMON Section 61(e)

The creation, transfer, or termination of any tenancy in common interest of 5 percent or more is a change in ownership requiring an appraisal of the interest transferred.

EXCLUSIONS Section 65(b)

- (1) The transfer of an undivided interest of less than 5 percent is not a change in ownership. However, transfers to affiliated transferees during any assessment year shall be accumulated for the purpose of determining the percentage transferred.
- (2) No change in ownership occurs if the transfer is interspousal.
- (3) See also general exclusions.

J. JOINT TENANCY Section 61(d)

- (1) The creation, transfer, or termination of any joint tenancy interest, except as excluded in Section 62(f), 63, and 65, is a change in ownership.
- (2) Section 62(f) states that the creation or transfer of a joint tenancy interest, if the transferor after such creation or transfer is one of the joint tenants, shall not be included as a change in ownership.

- (3) The termination of a joint interest requires reappraisal of the interest transferred from one owner to another except as provided in 4 and 5.
- (4) The termination of an original transferor's interest in a joint tenancy described in 2 above (i.e., 62(f) exclusion) requires reappraisal of the entire portion of the property held by the transferor prior to the creation of the joint tenancy. Assembly Bill 1019 provides that there shall be no reappraisal if the transfer is by operation of law (i.e., death of the original transferor) and there is still an original transferor remaining as a joint tenant.
- (5) The termination of an interest other than an original transferor's interest in a joint tenancy described in 2 above requires reappraisal of the interest transferred except when the interest revert to an original transferor, or else all remaining joint tenants.
- (6) The only time an original transferor needs determining is when there is the termination of an interest in a joint tenancy which was excluded from reappraisal in a transaction described in Section 62(f).
- (7) A person holding a joint tenancy interest on March 1, 1975 shall be rebuttably presumed to have placed the property in joint tenancy as described in Section 62(e). This presumption does not apply to joint tenancies created after March 1, 1975.

EXCLUSIONS Section 65(a)

- (1) The creation or transfer of a joint tenancy interest where the transferor is one of the joint tenants after the creation or transfer is excluded from being a change in ownership (Section 62(f)). Example: A and B grant to A, B, C, and D all as joint tenants (25 percent undivided interest each).
- (2) The termination of an interest of other than an original transferor is not a change in ownership if the interest is returned to an original transferor or to all remaining joint tenants. Example: A and B grant to A, B, C, and D all as joint tenants (25 percent undivided interest each). If C's interest transfers to A, B, and D equally (each now has $33 \frac{1}{3}$ percent), the transfer is excluded from being a change in ownership.
- (3) The termination of an original transferor's interest is not a transfer causing reappraisal if the interest vests by operation of law (death of the original transferor) in whole or in part in a remaining original transferor. Example: A and B grant to A, B, C, and D all as joint tenants (25 percent undivided interest each). A dies. A's interest vests by operation of law (his death), in part, in B who is also an original transferor. Therefore, no reappraisal is called for.

- (4) The transfer of a joint tenancy interest between spouses is not a change in ownership.
- (5) See also general exclusions.

K. GENERAL EXCLUSIONS

Change in ownership shall not include the following:

- (1) Any transfer between co-owners resulting in a change in the method of holding title without changing the proportional interests held by the co-owners prior to the transfer. This does not apply to partnership properties. Section 62(a).
- (2) Any transfer for the purpose of perfecting title. Section 62(b).
- (3) The creation, assignment, termination, or reconveyance of a security interest not coupled with the right to immediate use, occupancy, possession, or profits. Section 62(c).
- (4) The substitution of a trustee under the terms of a security or trust instrument. Section 62(c).
- (5) The transfer of bare legal title. Section 62(c).
- (6) Any interspousal transfer including but not limited to (Section 63):
 - (a) Transfer to a trustee for the beneficial use of a spouse or surviving spouse, or transfer by a trustee of such a trust to a trustor's spouse.
 - (b) Transfer upon death of a spouse.
 - (c) Transfer to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.
- (7) Transfer of a tenancy in common interest of less than 5 percent. However, transfers to affiliated transferees during any assessment year shall be cumulated for the purpose of determining the percentage transferred. Section 65(b).
- (8) The creation, vesting, transfer, distribution or termination of a participant's or beneficiary's interest in an employee benefit plan. Section 62(h).
- (9) Any contribution of real property to an employee benefit plan. (The terms "employee benefit plan," "participant," and "beneficiary" shall be defined as they are defined in the Employee Retirement Income Security Act of 1974.) Section 62(h).

TO COUNTY ASSESSORS

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February 19, 1980

We hope this information will aid in your understanding of these statutes. We anticipate that the Legislature will continue to "fine tune" the law in this area as well as others. As any changes come into being, we will of course keep you informed. Meanwhile, if you have any questions in this area, please contact our Technical Services Section headed by John McCoy at (916) 445-4982.

Sincerely,

A handwritten signature in cursive script that reads "Verne Walton".

Verne Walton, Chief
Assessment Standards Division

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