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April 13, 1992

Re: Change in Ownership - Life Estate on C
Leased Property

Dear Mr. :

This is in response to your letter of February 20, 1992, to Richard Ochsner, Assistant Chief Counsel, in which you request our opinion regarding whether the quitclaim of a life estate would cause a change in ownership for property tax purposes. The facts given below are from your letter and our phone conversation.

In 1975, Mr. J. S. passed away. Among his property was a service station which had been leased by C. U.S.A. since 1955. This property, which is located in Los Angeles County, has a lease that provides for continued operation as a service station until 2015. Mr. S. and his brother owned the subject property. The decedent's interest was divided into a life estate for a friend who received the income, and the remainder interest went to decedent's spouse and children.

You have asked if the decedent's wife and children purchased the life tenant's interest, would this result in a change in ownership for property tax purposes? As an alternative, you have asked if the life estate terminates as a result of the death of the life tenant, would this event cause a change in ownership for property tax purposes?

Revenue and Taxation Code Section 60 (all statutory references are to the Revenue and Taxation Code unless otherwise indicated) defines "change in ownership" 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.

Section 61 states in pertinent part that a change in ownership shall include:

- (f) Any vesting of the right to possession or enjoyment of a remainder or reversionary interest which occurs upon the termination of a life estate or other similar precedent property interest, except as provided in subdivision (d) of Section 62 and in Section 63.

Property Tax Rule 462(d)(1) [18 Calif. Code of Regulations Section 462] provides:

Life estates. 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.

Section 63 states with respect to interspousal transfers that "Notwithstanding any other provision in this chapter, a change in ownership shall not include any interspousal transfer".

Section 63.1 provides in pertinent part that:

Transfers between parents and their children. (a) Notwithstanding any other provision of this chapter, a change in ownership shall not include either of the following purchases or transfers for which a claim is filed pursuant to this section:

- (1) 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.
- (2) 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.

It is clear from Property Tax Rule 462(d)(1) that the transfer of a life estate is a change in ownership. Thus, if decedent's friend (life tenant) transfers the life estate to someone other

than the friend's spouse, parent or child during the life tenant's life, the transfer would be a change in ownership under Section 60. As the situation you have posed involves a transfer to decedent's spouse and children and not the friend's spouse, parents and/or children, a change in ownership would occur at the time of transfer of the life estate during the life tenant's life.

Were the life estate to terminate as a result of the death of the life tenant, however, the transfer to the remaindermen would be from the transferor of the remainder interest, decedent. Thus, if the life tenant continued to own the property until his/her death, the interspousal and parent-child exclusions would be applicable because the transfer under Section 61(f) to decedent's spouse and children would have been from decedent, rather than from the life tenant. Thus, there would be no change in ownership in this scenario, except that the transfer to decedent's children would be excluded only to the extent that the transfer did not exceed the "full cash value" limitations of Section 63.1 and the other requirements of that section were met.

An additional consideration is that the property is subject to a lease. Since the lease continues only until 2015, there are less than 35 years remaining on the lease. If the interspousal and parent-child exclusions were not applicable, the transfer of the lessor's interest in the property, subject to a lease with a remaining term of less than 35 years, would constitute a change in ownership, and revaluation of the property would occur. (See Property Tax Rule 462 (f)(1)(B)(i)).

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the Los Angeles County Assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusions stated above.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Carl J. Bessent
Tax Counsel

CJB:jd/0113H

cc: