


**STATE BOARD OF EQUALIZATION**

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No. 85/128

December 5, 1985

TO COUNTY ASSESSORS:

SALE AND LEASEBACK TRANSACTIONS

On November 5, 1985 the Members of the State Board of Equalization directed Board staff to send this letter to you as a confirmation of their continuing position that sales and leasebacks constitute a change in ownership requiring reappraisal of the entire property sold. If the leaseback is for a term of 35 years or more (including renewal options), a second change in ownership occurs.

It has come to the Board's attention that in at least some sale and leaseback transactions the involved parties have couched the leaseback as an exception or reservation of an estate for years in the instrument by which title is being transferred to the buyer and then contend that such a provision brings the transaction within the "change in ownership" exclusion found in Revenue and Taxation Code Section 62(e).

The Board has consistently considered Section 62(e) to exclude only transfers that involve a true retention by the transferor of a present interest in the property and a conveyance to the transferee of only a future interest. In a sale and leaseback the purchaser-lessor receives title to the property, and the right to possession. The fact that the parties agree that the new owner will lease the property to the former owner in no way diminishes the purchaser's ownership interest any more than would a lease not preceded by a sale. The lease creates a landlord and tenant relationship which by operation of law gives the landlord the right to receive rent. What the purchaser-lessor has done is exercise the right of possession, a present beneficial use, by leasing the property in exchange for payment of rent. (Orbach's, Inc. v. Los Angeles County, 190 Cal. App. 2d 575.) A landlord's right to receive rent is a present interest in property that is assignable, may serve as security for a loan obtained by the lessor (Oakland Title Insurance and Guarantee Co., 122 CA 73), and arises out of the landlord's grant of the right to possession to the lessee. (Baker v. J. Maier & Zobelein Brewery, 140 C 530.)

While the term "reserves" in Section 62(e) is not specifically defined, it is evident from the Report of the Task Force on Property Tax Administration, January 22, 1979, at page 37, et seq., and the report prepared by the Assembly Revenue and Taxation Committee staff, entitled Implementation of

December 2, 1985

Proposition 13, Volume 1, Property Tax Assessment, October 29, 1979, at page 18, et seq., that both considered the exclusion to apply when the transferor retained an ownership interest in the property and the transferee did not receive a present beneficial interest.

Whatever the contentions of the parties to a sale and leaseback, it must be remembered that the use of the term "reserves" in a deed is not by itself sufficient evidence of the true intentions of the parties. The assessor must review all of the transfer documents to determine just what property interest has been transferred. When the purchaser-lessor pays for all interests in the property and the seller-lessee is required to pay rent for the use of all or part of the property and the purchaser-lessor has the other burdens and benefits of an owner, it is incorrect to conclude that the transfer is within the Section 62(e) exclusion.

Sincerely,



Verne Walton, Chief  
Assessment Standards Division

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