

From: Greg Turner
Sent: Sunday, January 6, 2019 4:05 PM
To: Schultz, Glenna
Cc: Galbraith, Susan (Legal); Yeung, David
Subject: Rescissions

Hi Glenna,

As I recall, at the IP meeting I volunteered to write/re-write the LTA portion in regard to mutual rescissions. When I embarked upon that endeavor, it struck me that much of the LTA was repetitive, contextually out of order, and I think more complicated than necessary. Consequently, what started as a sectional draft engulfed the entirety of the LTA.

I think from the Assessor's perspective, rescissions should be considered in two contexts. (1) unilateral, and (2) mutual. I have broken them out accordingly. Much of the initial draft LTA comingled these concepts which not only made the LTA confusing, but, I believe, inconsistent with the law.

The attached markup is more of a revision than a real markup, but here is how to read it: Red-underlined is added text. Strikethroughs are of original text. Black text is original text. Obviously, vast swaths of the original are left out simply because to strikeout that much text made the document harder to read.

One matter I did not address, but was raised at the IP meeting by BOE counsel: whether a gift deed once recorded is fully executed and therefore cannot be rescinded. I am not sure this is the law, frankly but it is also not my particular issue. If the effort is to extinguish rescissions as a means of reverting to an earlier base year value, that certainly would accomplish the goal for many, many transfers. However, I have not expended the time to fully flush out whether a gift deed is (a) a fully executed contract – given that gifts are perhaps not really contracts to begin with, and also whether such gifts are fully executed or can nevertheless be executory; and (b) whether there is a meaningful distinction between a fully executed and executory contract for purposes of rescission. Note, however, that I redrafted the first section defining “grant” and “deed” because I think it was inaccurate and led to some of the confusion at the meeting.

With some examples tagged on to the end, I think this LTA could greatly assist assessors and taxpayers in knowing what constitutes a valid rescission, what might be viewed as a sham and what might be viewed as a wholly new transfer of real property.

If you would like to discuss any of this, of course, please do not hesitate to contact me. I look forward to the next revision.

Best regards,

--Greg

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RESCISSION EXAMPLES FROM STANISLAUS COUNTY

Mutual Rescission: Legal Entity

This type of scenario happens most frequently in Stanislaus County.

The real property is owned by H&W in their family trust.

A deed is recorded transferring title from their family trust to their legal entity. The owners provided documentation stating that the legal entity composed of H&W trust at 99% and 1% to a child at formation of the entity. Therefore, the proportional interests were not the same resulting in a 100% reassessment. The owners used an attorney to prepare the deeds.

The owners received a supplemental tax bill and our office was contacted by the attorney. Our office allowed the property owners (legal entity and individuals) to rescind the original transfer and restore title from the legal entity back to the trust. Another deed recorded transferring 1% interest to the son (allowing a P58 exclusion). Then the three owners (H&W trust 99%; child 1%) transferred title to the legal entity. The proportional interests were the same resulting in an exclusion pursuant to R&T code section 62(a)(2).

The supplemental assessment for the original transfer was due and payable. The original value was restored for the following year since the rescission deed was recorded prior to lien date. The 1% P58 value reported to BOE was based on the original value (not after the reassessment).

Mutual Rescission: Estate planning & taxpayer prepared documents

Property was originally purchased prior to the passage of Prop 13. The property had transferred to between family members (some children) prior to Prop 58 passage which required a reassessment for each transfer. The last reassessment was for a 9-6-1985 transfer.

In 2010, the current owners, the son and dau-in-law transferred title to parents. A parent-to-child exclusion claim was filed and granted. In December 2016, a Grant Deed was recorded where the grandparents transferred title to their grandson. The middle-generation parents are still alive. Therefore, a 100% reassessment was processed and a new increased value was enrolled. Since this transfer occurred at the end of the calendar year, the reassessment wasn't completed until after lien date and the supplemental value notice mailed in June 2017. The property owners filed a Rescission Deed in December 2017, restoring title back to the grandparents. The Assessor accepted the Rescission and restored the prior base year value for 2018. The supplemental assessment and the 2017 Assessment Roll Value remained at the increased value.

Mutual Rescission: When a taxpayer takes estate planning into their own hands

Mary owned 100% interest in the property in 2011.

In 2015, Mary added son, Tim, to title on a deed clearly prepared at home with no legal representation ("kitchen table deed"). Transfer was considered as a parent-child transfer. Now, Mary and Tim own the property 50/50.

In 2016, using another “kitchen table deed”, Mary and Tim deed property to Mary and Katrina. Katrina is Mary’s daughter. Property is reassessed 50%, brother to sister transfer.

After receiving her supplemental notice, Mary called the office. Mary stated a mistake has been made. Her son, Tim, has recently become untrustworthy. For estate planning reasons, she wanted to put her daughter on title in case in the event of her death.

The taxpayer retains of lawyer to assist in completing a rescission deed. The assessor allows the FBV to be restored.

A final deed recorded to transfer Tim’s interest to Mary, PX is applied. A trust is then drawn up by the attorney.

Mutual Rescission: Entity

B and M, husband and wife, own 38% and D owns 62% of the subject property.

In 2012, they all transfer the property to the BMD LP. Transfer is excluded as proportional interests.

In 2016, a deed is recorded transferring the property from BMD LP to B and M as husband and wife; resulting in a 100% reassessment.

The lawyer admitted a mistake had been made. A rescission of the 2016 was recorded. Then a deed was recorded transferring the property from BMD LP to B and M, husband and wife, own 38% and D owns 62%.

Finally, a deed was recorded transferring the property from D to B and M, a parent-child exclusion was applied. The value reported for parent-child reporting was 62% of the original base value, as the value is not subject to a supplemental, the base value is restored as of the date the rescission is recorded.