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December 8, 2015

**Re: *Change of Ownership – Series Partnership
 Assignment No.: 15-167***

Dear Mr. _____ :

This is in response to your letter requesting our opinion regarding the change in ownership consequences of certain proposed distributions of trust assets held in different series of a limited partnership. As explained below, in our opinion, the proposed distributions will result in the change in control in various series of the limited partnership, and, thus, a change in ownership would occur on all of the properties held by those series.

Facts

Based on the information you provided, we understand that _____, L.P. (Partnership) is a Delaware limited partnership consisting of eight series (Series, or Separate Series).¹ Series 1 through 7 are owned by three irrevocable trusts as follows: 1) 25 percent by Trust No. 1, with James Doe (James) as the trustee and present beneficiary; 2) 25 percent by Trust No. 2, with Jay Doe (Jay) as the trustee and present beneficiary; and 3) 50 by percent by the Jane Doe (Jane) Survivor's Trust (Survivor's Trust), with Jane as the trustee and the present beneficiary until her death on September 17, 2011. The same three trusts also, together with the Bypass Trust (referred elsewhere in your letter as the General Trust), with Jane as the trustee and the present beneficiary until her death, own Series 8 in equal shares of 25 percent each. James and Jay are Jane's sons.

According to the Limited Partnership Agreement of the Partnership (Partnership Agreement) dated April 1, 2006, James and Jay, as the trustees of Trust No. 1 and No. 2, are the two general partners of Partnership, each with 0.5 percent general partner interest in each Series. James and Jay, as the trustees of Trust No. 1 and No. 2 are also, together with Jane, as the trustee of the Survivor's Trust, the limited partners of Partnership, each with 24.5, 24.5, and 50 percent limited partner interest in each Series, respectively. (See Schedule A of Partnership Agreement.)

Based on the information you provided, it is our understanding that Partnership's eight series each have a 100 percent interest in one separate parcel of real property. It is also our understanding that all of the property interests were transferred by some or all of the four irrevocable trusts into each Series. You provided a table, copied below, to illustrate the

¹ We note that the April 1, 2006, Partnership Agreement that you provided mentions only three trusts as partners and seven series in Partnership. However, the table that you provided lists four trusts and eight series. We assume that the table reflects the factual situation presented.

percentage interests in each parcel of real property that each trust contributed (shown in parenthesis in the table below), as well as the percentage interest of each Series that each trust received in return (shown above the parenthesis in the table below).

	Series 1	Series 2	Series 3	Series 4	Series 5	Series 6	Series 7	Series 8
Trust 1 (James Doe)	25% (25% in Parcel 1)	25% (25% in Parcel 2)	25% (25% in Parcel 3)	25% (18.75% in Parcel 4)	25% (16.25% in Parcel 5)	25% (25% in Parcel 6)	25% (25% in Parcel 7)	25% (25% in Parcel 8)
Trust 2 (Jay Doe)	25% (25% in Parcel 1)	25% (25% in Parcel 2)	25% (25% in Parcel 3)	25% (18.75 in Parcel 4)	25% (16.25% in Parcel 5)	25% (25% in Parcel 6)	25% (25% in Parcel 7)	25% (25% in Parcel 8)
Survivor's Trust (Jane Doe)	50% (50% in Parcel 1)	50% (50% in Parcel 2)	50% (50% in Parcel 3)	50% (37.5% in Parcel 4)	50% (32.5% in Parcel 5)	50% (50% in Parcel 6)	50% (50% in Parcel 7)	25% (25% in Parcel 8)
Bypass Trust (Jane Doe)	0 (0% in Parcel 1)	0 (0% in Parcel 2)	0 (0% in Parcel 3)	0 (25% in Parcel 4)	0 (35% in Parcel 5)	0 (0% in Parcel 6)	0 (0% in Parcel 7)	25% (25% in Parcel 8)

Based on the information provided and assumptions that we have made above, we further assume that the results in the table above were achieved in different steps, as follows:

1. Trust No. 1, Trust No. 2, and the Survivor's Trust contributed their combined 100 percent interest in Parcels 1, 2, 3, 6 and 7, as well as their combined 75 percent and 65 percent interest in Parcels 4 and 5, to the respective Series, in exchange for a proportional interest in each respective Series of the Partnership.² At this point, Series 4 and 5 only had partial interest in Parcels 4 and 5. (See Schedule A-1 of Partnership Agreement.)
2. Later, the Bypass Trust contributed its 25 percent interest in Parcel 4 and its 35 percent interest in Parcel 5 to Series 4 and 5, respectively, but received no interest in Series 4 or 5 in return. As a result, Series 4 and 5 now have a 100 percent interest in Parcel 4 and 5.
3. Also, all four trusts later contributed their combined 100 percent interest in Parcel 8 to Series 8, in exchange for the exact proportional interest in Series 8.

Pursuant to the Partnership Agreement, "[t]itle to all Partnership property shall be held in the names of the [S]eries to which it belongs. . . ." (See Section 2.8, subd. (a) of the Partnership Agreement, at p.9.) In addition, "[s]eparate and distinct records shall be maintained of the assets

² While the before and after interest percentages for Series 4 and 5 do not match based on the table, since the percentage of the property transferred is equal to the percentage interest in each property owned through the Series by the three trusts, the transfers are proportional. More specifically, for Series 4, a 25/25/50 percent ownership in Series 4 equals an 18.75, 18.75, and 37.5 percent interest in the property respectively. Similarly, for Series 5, a 25/25/50 percent ownership in Series 5 equals a 16.25, 16.25, and 32.5 percent interest in the property respectively.

and liabilities and the Profits and Losses of each series." (*Id.*) Furthermore, each Series has its own dba. (*Id.*)

According to you, as a result of Jane's death, the assets in the Survivor's Trust and the Bypass Trust are distributable in equal shares, to subtrusts for her son James (James' Subtrusts, with James as the present beneficiary), and to subtrusts for her son Jay (Jay's Subtrusts, with Jay as the present beneficiary). You explain that both the Survivor's Trust and the Bypass Trust permit nonprorata distributions of property. You also explain that these two trusts now plan to distribute all or part of their interests in certain Series to James' Subtrusts, and all or part of their interests in other Series to Jay's Subtrusts in nonprorata distributions. These distributions will result in Trust No. 1 and James' Subtrusts owning up to 75 percent of the total interests in capital and profits of certain Series and as little as 25 percent of the total interests in capital and profits of other Series. It is our understanding that Trust No. 2 and Jay's Subtrusts will own the balance of the interests in capital and profits of each Series. We note that you did not provide a breakdown of the exact ownership interests in each Series following the proposed distributions.

You state that James' Subtrusts and Jay's Subtrusts will execute an amendment to the Partnership Agreement requiring adjustments in the allocations of the profits and losses of one or more of the Series to maintain equal ownership by James' Subtrusts and Jay's Subtrusts of the total interest in the profits of the Partnership.

It is our understanding that you request confirmation that the proposed distributions and the operation of the Partnership in accordance with the proposed amended Partnership Agreement will not result in a change in ownership of any of the real property owned by the Partnership because:

- (1) They will not result in a transfer of more than 50 percent of the total interest in capital and more than 50 percent of the total interest in profits of the Partnership, so as not to cause a change in ownership pursuant to Revenue and Taxation Code section 64, subdivision (d);
- (2) They will not result in any person obtaining directly or indirectly more than 50 percent of the total interest in capital and more than 50 percent of the total interest in profits of the Partnership, so as not to cause a change in control pursuant to Revenue and Taxation Code section 64, subdivision (c); and
- (3) Separate series are not separate legal entities under California law or for purposes of Revenue and Taxation Code section 64.

Law and Analysis

Change in Ownership Rules

Article XIII A, section 2 of the California Constitution requires the reassessment of real property upon a "change in ownership," unless an exclusion from change in ownership applies. A change in ownership is defined in Revenue and Taxation Code section³ 60 as "a transfer of a

³ All "section" references are to the California Revenue and Taxation Code, unless otherwise indicated.

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 64, subdivision (a) provides that the purchase or transfer of ownership interests in legal entities does not constitute a transfer of the legal entity's real property. One exception to this rule is provided in section 64, subdivision (c)(1), and Property Tax Rule⁴ (Rule) 462.180, subdivision (d)(1), which provide that when a legal entity or other person obtains control through direct or indirect ownership or control of more than 50 percent of a corporation's voting stock, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity, through the purchase or transfer of that corporate stock or other interest, there is a change in ownership of the real property owned by that corporation or other legal entity in which the controlling interest is obtained. For limited liability companies or partnerships, the degree of ownership is determined by the direct or indirect ownership of the interests in the capital and profits. (Rule 462.180, subd. (d)(1)(B).)

In addition, Rule 462.180, subdivision (d)(4) provides that transfers of legal entity interests that result solely in a change in the method of holding title, and in which proportional ownership interests in all real property represented by the transferred interests remain the same after the transfer, do not constitute a change in ownership. But whenever a transfer of ownership interests in a legal entity (transferred entity) is excluded from change in ownership under Rule 462.180, subdivision (d)(4), immediately after the transfer, the holders of the interests in the legal entity to which the interests were transferred (transferee entity) become "original co-owners" with respect to the legal entity ownership interests of the transferee entity for purposes of determining the change in ownership consequences of any subsequent transfers of transferee entity interests. (Rule 462.180, Example 10.) Subsequently, whenever cumulatively more than 50 percent of the total original co-owner interests in the transferee entity are transferred by any of the original co-owners in one or more transactions, a change in ownership of that real property that was previously excluded from change in ownership occurs. (Rev. & Tax. Code, § 64, subd. (d); Rule 462.180, subd. (d)(2).)

For transfers involving trusts, because trusts are generally not considered separate entities for California property tax change in ownership purposes, it is necessary to "look through" the trust to identify the beneficial owner of property or legal entity interests. (Property Tax Annotation⁵ 220.0377 (June 19, 2012).) Present beneficial ownership in a trust corpus is determined by disregarding the trustee's legal title, and the owner of the present beneficial interest in the trust corpus is considered to be the trustor of a revocable trust and the present beneficiary of an irrevocable trust. (Rev. & Tax. Code, §§ 60, 62, subd. (d); Rule 462.160, subd. (b)(2); *Reilly v. City and County of San Francisco* (2006) 142 Cal.App.4th 480.) Neither the trustee, nor the trust itself is ever viewed as the "owner" of the trust property for change in ownership purposes, even though "legal title" is recorded in the trustee's or the trust's name. (Rules 462.160 and 462.240.) Thus, where a transfer to a legal entity excluded under section 62, subdivision (a)(2) is made by a trust, the present beneficiaries of the trust are deemed the original co-owners.

⁴ All Rule references are to title 18 of the California Code of Regulations.

⁵ Property tax annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State Board of Equalization's Property Tax Law Guide. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

Delaware Series Limited Partnership

California law does not allow for a series partnership or series LLC to be formed in California. However, Delaware allows for a series limited partnership. Title 6 of Delaware Code section 17-218, subdivision (a) states that:

A partnership agreement may establish or provide for the establishment of 1 or more designated series of limited partners, general partners, partnership interests or assets. Any such series may have separate rights, powers or duties with respect to specified property or obligations of the limited partnership or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective.

(6 Del. Code, § 17-218, subd. (a).)

In addition, if notice, record-keeping, and other requirements in subdivision (b) of Delaware Code section 17-218 are satisfied, the Delaware law also provides that:

. . . [t]he debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series or general partner shall be enforceable only against the assets of such series or a general partner associated with such series and not against the assets of the limited partnership generally, any other series thereof, or any general partner not associated with such series, and, unless otherwise provided in the partnership agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited partnership generally or any other series thereof shall be enforceable against the assets of such series or a general partner associated with such series.

(6 Del. Code, § 17-218, subd. (b).) Furthermore, "[a]ssets associated with a series may be held directly or indirectly, including in the name of such series, in the name of the limited partnership, through a nominee or otherwise." (*Id.*) Also, unless otherwise provided in a partnership agreement, a series "shall have the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued." (6 Del. Code, § 17-218, subd. (c).)

The above provisions relating to series partnerships are similar to the Delaware law provisions on series limited liability companies (LLC), which are found in title 6 of Delaware Code section 18-215 and which we examined in Annotation 220.0375.025 (August 17, 1999, March 29, 2002). In the annotation, we opined that the transfer of real property by its owners to an LLC, which statutorily is authorized to issue series of ownership interests specific to the property being transferred, is excluded from change in ownership and reassessment where all of the subject series of ownership interests (represented by capital and profits) are owned exclusively by the former owners of the real property in the exact proportions in which they held the real property. However, as a result, the transferors became original coowners. (See backup Letter to Annotation 220.0375.025, p. 5.)

(1) Application of Revenue and Taxation Code section 64, subdivision (d)

You first ask us to confirm that there is no change in ownership of the parcels owned by the Series pursuant to section 64, subdivision (d), when, following Jane's death, the Survivor's Trust and the Bypass Trust distribute their combined 50 percent interest in each Separate Series to James' Subtrusts or Jay's Subtrusts in a nonprorata distribution.

Based on the information you provided and the assumptions we have made, except for the property contribution made by Bypass Trust into Series 4 and 5,⁶ all of the property contributions by the various trusts into the Series are proportional as reflected in the table above. Consistent with our opinion in Annotation 220.0375.025, the proportional property contributions by the trusts into the Series are excluded from change in ownership reassessment under section 62, subdivision (a)(2). However, as a result, James, Jay, and Jane, as the present beneficial owners of the Series and Partnership interest through their trusts, became original co-owners under section 64, subdivision (d), for purposes of counting future transfers of each respective Series' interests. (Annotation 220.0375.025.) As such, whenever cumulatively more than 50 percent of the total original co-owner interests in any Series are transferred in the future, a change in ownership of that real property owned by the respective Series, which was previously excluded from change in ownership, occurs.⁷ (Rev. & Tax. Code, § 64, subd. (d); Rule 462.180, subd. (d)(2).)

As for the proposed distribution, as previously discussed, a change in ownership under section 64, subdivision (d) is triggered only when cumulatively more than 50 percent of original co-owner interests are transferred. Here, regardless of whether the interests to be distributed are original co-owner interests, the Survivor's Trust and the Bypass Trust together only have a combined 50 percent interest in each of the Series to be distributed (i.e., not more than 50 percent). For these reasons, and based on the facts provided and the assumptions made, the proposed distribution will not trigger a change in ownership pursuant to section 64, subdivision (d) in any of the Series.

(2) Application of Revenue and Taxation Code section 64, subdivision (c)(1)

You also asked us to confirm that there is no change in ownership of the parcels owned by the Series pursuant to section 64, subdivision (c)(1), when the Survivor's Trust and the Bypass Trust distribute their combined 50 percent interest in each Separate Series to James' Subtrusts or Jay's Subtrusts in a nonprorata distribution.

Based on the information you provided, before Jane's death, Trust No. 1 and Trust No. 2 each had a 25 percent interest in each Series and in Partnership, while the Survivor Trust and Bypass Trust had a combined 50 percent interest in each Series and in Partnership. The present beneficiaries of these four irrevocable trusts, James, Jay, and Jane respectively, are considered the beneficial owners of such Series or Partnership interest, in the percentages of 25, 25, and 50 respectively, *before* Jane's death. (Rev. & Tax. Code, §§ 60, 62, subd. (d); Rule 462.160,

⁶ The Bypass Trust received no interest in Series 4 or 5 in return for its property contributions into Series 4 and 5, and, thus, its contributions are not proportional. As such, those two contributions would have been reassessable under section 61, subdivision (j) at the time of transfer.

⁷ This will not include the 35 or 25 percent property interest the Bypass Trust contributed to Series 4 and 5, respectively, as those contributions should have been reassessed at the time of transfer. (See Footnote 6 of this opinion.)

subd. (b)(2); *Reilly v. City and County of San Francisco* (2006) 142 Cal.App.4th 480.) In addition, your letter indicates that James and Jay respectively hold beneficial ownership interest of all trust property in the James' Subtrusts or Jay's Subtrusts. As such, in looking through the trusts, *upon* Jane's death, we would regard James and Jay as the beneficial owners of any Series or Partnership interests previously held by Jane that are to be distributed to the two sub-trusts by the Survivor Trust and Bypass Trust. Since James and Jay beneficially each owned a 25 percent interest in each Series and in Partnership before Jane's death, and, then upon Jane's death, James and Jay, based on the default trust terms, would share equally, via their subtrusts, the beneficial ownership in the other 50 percent interest in each Series and in Partnership previously held by Jane, no person or entity owns more than 50 percent of the capital and profits interest in any Series or in Partnership upon Jane's death. Therefore, no Series or Partnership underwent any change in control pursuant to section 64, subdivision (c)(1) on the date of Jane's death.

However, you state that the trustees contemplate distributing the Series interest in a non prorata manner such that Trust No. 1 and James' Subtrusts will own up to 75 percent of the total interests in capital and profits in certain Series and as little as 25 percent of the total interests in capital and profits of other Series. You also indicate that Trust No. 2 and Jay's Subtrusts will own the balance of the interests in capital and profits of each Series. As such, the proposed nonprorata distribution may result in Trust No. 2 and Jay's Subtrusts also owning up to 75 percent of the total interests in capital and profits in certain Series. Therefore, either James or Jay would become the beneficial owner of up to 75 percent of the total capital and profit in certain Series. Since neither James nor Jay (through their trusts) currently has more than 50 percent interest in any of the Series before the proposed distribution, a change in control of a Separate Series would result, on the date of the actual distribution, where the proposed distribution results in either James or Jay actually owning (through their respective trusts) more than 50 percent of the total capital and profits of that Separate Series causing a change in control of each Series pursuant to section 64, subdivision (c)(1).

Although you state that the trustees would amend the Partnership Agreement to require adjustments in the allocations of the profits and losses of one or more of the Series to maintain equal ownership by James' Subtrusts and Jay's Subtrusts of the total interest in the profits of Partnership, this would only ensure that neither James nor Jay obtained control of the *Partnership*, and does not affect whether they have control in any particular Series. This is because, as explained below, each Series is treated as a separate legal entity for California property tax purposes.

(3) Separate Series as Separate Legal Entities

As California law does not allow for a Series partnership or LLC to be formed in California, the legislative history of section 62(a)(2) and section 64 demonstrates no specific consideration of series partnerships or LLCs when those statutes were enacted or amended. However, by definition, section 64 applies not just to corporations, partnerships, or limited liability companies, but to any "other legal entity". (See Rev. & Tax. Code, § 64, subd. (c)(1).) A legal entity is "any business organization that is legally permitted to enter into a contract, including a contract for the purchase, sale, or lease of real property" as well as "any business organization with an existence separate from its owners." (Assessors' Handbook (AH) 401, p. 38; LTA 2011/106.) (For example, in Annotation 220.0399 (January 13, 1998), we opined that a business trust, under which the trustee has broad powers and the trust property is being

used as or in a business, is a legal entity for California property tax purposes and subject to the provisions of section 61, subdivision (j) and section 64; See also Annotation 565.0010.)

Your letter indicates that Partnership is a Delaware limited partnership. We assume that Partnership is a series limited partnership that was formed in Delaware under Delaware law. Pursuant to Delaware law, the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular Series are enforceable only against the assets of such Series and not against the assets of the Partnership generally, and the converse is true with respect to the Partnership's liabilities and obligations. (6 Del. Code, § 17-218, subd. (b).) The law also provides that each Separate Series has the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued. (6 Del. Code, § 17-218, subd. (c).) Additionally, the Partnership Agreement itself provides that each Series has its own dba and maintains separate and distinct records of its assets and liabilities and Profits and Losses. (See Section 2.8, subd. (a) of the Partnership Agreement, at p.9.) The Partnership Agreement also provides that title to the property shall be held in the names of the Series to which it belongs (i.e., the real property at issue is owned by the Series to which it belongs). (*Id.*)

Based on the above, in our view, each Series in Partnership is a legal entity within the meaning of the California property tax law and thus subject to the provisions of section 64, subdivision (c)(1), and Rule 462.180, subdivision (d)(1).⁸ As such, when either James or Jay obtains more than 50 percent interest in any Series through the proposed distribution, this would result in a change in control of that Series and it would lead to reassessment of the real property owned by that particular Series. This is true regardless of whether the interest is obtained via the assets distribution by the Survivor's Trust and Bypass Trust or via any adjustment to the allocations of the profits and losses within one or more Series in order to maintain equal ownership by them of the total interest in the profits and losses of the Partnership.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity. If you have any additional questions, please feel free to contact me.

Sincerely,

/s/ Mengjun He

Mengjun He
Tax Counsel III (Specialist)

MH: yg

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cc: Mr. Dean Kinnee (MIC:63)
Mr. David Yeung (MIC:61)
Mr. Todd Gilman (MIC:70)

⁸ A sentence in the March 29, 2002 back-up letter to Annotation 220.0375.025 stating that separate series LLC interests should not be treated as separate legal entities was not referring to whether those interests should be treated as such for California property tax purposes. Such a reading would be inconsistent with that letter's conclusion that section 62, subdivision (a)(2) applies in the transaction described in that letter.