

STATE OF CALIFORNIA

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(916) 552-6593

April 18, 1989

Dear

This is sent in response to your letter dated March 8, 1989, to Mr. [redacted] wherein you request an opinion regarding the change in ownership consequences of a series of proposed transactions. You have expressed your opinion that the transactions are exempt from such consequences under Rule 462(j)(2)(A) of the Property Tax Rules of Title 18 of the California Code of Regulations.

Because of the complexity of the issues, each such proposed transaction will be separately described and analyzed.

FACTS

The facts set forth in your letter are as follows:

T [redacted] a Japanese corporation, ("T [redacted]") is the 100 percent shareholder of T [redacted] USA, Inc. ("T [redacted] USA"). T [redacted] USA, in turn, is the 100 percent shareholder of:

1. T [redacted] Construction Corp. ("T [redacted] Construction"), which has two branches: (i) the L [redacted] Branch and (ii) the S [redacted] Branch;
2. T [redacted] Development, Inc. ("T [redacted] Development"), which is the 35 percent owner of the W [redacted] Partnership ("W [redacted] Partnership"), and which has two branches: (i) the L [redacted] Branch and (ii) the S [redacted] Branch; and
3. T [redacted] America, Inc. ("T [redacted] America").

For business purposes, T [redacted], the parent corporation, wishes to implement the following transactions:

April 18, 1989

STEP 1

1. A new corporation to be known as T S ("T. S") will be organized, with all shares to be held by T USA.
2. The assets of the S branches of T Construction and T Development, including interests in real property, will then be transferred to T S.

LAW AND ANALYSIS

Subdivision (b) of section 64 of the Revenue and Taxation Code (all section references contained herein are to the Revenue and Taxation Code) states that ". . . any transfer of real property among members of an affiliated group . . . shall not be a change of ownership."

For purposes of said section 64(b), an "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if:

(1) One hundred percent of the voting stock, exclusive of any shares owned by directors, of each of the corporations, except the parent corporation, is owned by one or more of the other corporations; and

(2) The common parent corporation owns, directly, 100 percent of the voting stock, exclusive of any shares owned by directors, of at least one of the other corporations. (Section 64(b).)

Rule 462(j)(2)(A) is to the same effect, specifically excluding from change in ownership consequences:

Transfers of real property between or among affiliated corporations, including those made to achieve a corporate reorganization if:

- (i) the voting stock of the corporation making the transfer and the voting stock of the transferee corporation are each owned 100 percent by a corporation related by voting stock ownership to a common parent, and

April 18, 1989

- (ii) the common parent corporation owns directly 100 percent of the voting stock of at least one corporation in the chain(s) of related corporations.

In the instant case, the stock of both T Construction and T Development are owned 100 percent by T USA. T S is also to be formed as a wholly-owned subsidiary of T USA. In turn, T USA is a wholly-owned subsidiary of T . Therefore, it is clear that these corporations constitute an affiliated group within the meaning of section 64(b) and Rule 462(j).

As all involved corporations are members of an affiliated group, the proposed transfers of real property to T S are excluded from any change in ownership consequences by section 64(b).

#### STEP 2

1. A new corporation to be known as T (or Newco) Realty Corp. ("T Realty") will be organized, with all shares to be held by T USA.
2. T Development will then transfer its 35 percent interest in the W Partnership to T Realty.

#### LAW AND ANALYSIS

These proposed transactions are also excluded from change in ownership consequences, but not for the reason you state. Rule 462(j)(2)(A) is inapplicable in this case as, except as to tax-free reorganizations, it is restricted to transfers of real property. Section 64(b) is similarly restricted in its application. The instant proposed transfer is of a 35 percent partnership interest, not of real property. Therefore, neither Rule 64(b) nor Rule 462(j)(2)(A) will be relevant to the issue at hand.

In other pertinent parts, however, section 64 provides as follows:

- (a) Except as provided in subdivision (h) of Section 61 and subdivisions (c) and (d) of this section, the purchase or transfer of ownership interests in legal entities, such as . . . partnership interests, shall not be deemed to constitute a transfer of the real property of the legal entity.

April 18, 1989

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(c) When a corporation, partnership, other legal entity or any other person obtains control, as defined in Section 25105, in any corporation, or obtains a majority ownership interest in any partnership or other legal entity through the purchase or transfer of corporate stock, partnership interest, or ownership interests in other legal entities, such purchase or transfer of such stock or other interest shall be a change of ownership of property owned by the corporation, partnership, or other legal entity in which the controlling interest is obtained.

Pursuant to Rule 462(j)(4)(A) of the referenced Property Tax Rules, obtaining a majority ownership interest in a partnership within the meaning of section 64(c) is effected by obtaining direct or indirect ownership or control of more than 50 percent of the total interest in both partnership capital and profits.

Subdivision (h) of section 61 deals with the stock of cooperative housing corporations and is inapplicable here. The above cited subdivision (c) of section 64 would also seem to be inapplicable as the interest being transferred is stated to be only 35 percent. There is no indication that T is thereby directly or indirectly acquiring a more than 50 percent interest in the capital and profits of the W Partnership within the meaning of Rule 462(j).

Therefore, absent other circumstances, the general rule of section 64 would seem to apply to the proposed transaction, under which the proposed transfer of the 35 percent partnership interest will not be deemed to constitute a transfer of the partnership's real property.

However, subdivision (d) of said section 64 sets forth the following exception:

(d) If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in such legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests

April 18, 1989

representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property which was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50 percent of the interests in the entity.

Pursuant to the above, if T Development held the 35 percent ownership interest in the W Partnership as an "original coowner" within the meaning of section 64(d), then the transfer by T Development of such partnership interest could, absent the application of a relevant exclusion, count towards cumulative ownership interests transferred in determining whether or not an aggregate of more than 50 percent of such interests had been transferred in total.

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 Assessor and any other involved assessor in order to confirm that the subject property or properties will be assessed in a manner consistent with the conclusions stated above.

Yours very truly,



Robert W. Lambert  
Tax Counsel

RWL:wak  
2319H

cc: Honorable  
County Assessor  
Mr. James J. Delaney  
Mr. John Hagerty  
Mr. Robert Gustafson  
Mr. Verne Walton