



STATE BOARD OF EQUALIZATION

1020 N. STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX: 1799, SACRAMENTO, CALIFORNIA 95808)

(916) 445-6414

WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. COLLIS
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

RICHARD NEVINS
Fourth District, Pasadena

KENNETH CORY
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

May 22, 1987

Dear :

This is in response to your letter dated May 5, 1987, requesting our confirmation that the following transaction will not result in a change in ownership. The transaction set forth in your letter is as follows:

One of your clients is a corporation that owns real property located in California. This corporation, X Corp., intends to implement the following transaction: X Corp. will organize a wholly owned subsidiary, Y Corp. X Corp. will deed the real property to Y Corp. in exchange for 100% of Y Corp.'s stock. X Corp. will then sell 50% of the Y Corp.'s stock to Z. Z is an investor not related to X Corp. Z has no interest in the real property that will be transferred from X Corp. to Y Corp.

We have not reviewed any of the documents connected with the transaction. Therefore, our opinion is based solely on the facts set forth in your letter. Assuming no additional facts exist which would change the interpretation of this transaction, our analysis is as follows:

The transfer of real property from X Corp. to its newly formed wholly owned subsidiary Y Corp. is excluded from change in ownership by Revenue and Taxation Code section 62(a)(2). Section 62(a)(2) provides that any transfer between legal entities which results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees remain the same, is not a change in ownership.

The subsequent sale of 50% of Y Corp.'s stock to Z also will not result in a change in ownership. As a general rule, the purchase or transfer of corporate stock is not deemed to constitute a transfer of the real property owned by the legal entity. (Rev. & Tax. Code § 64(a).) Two exceptions to this general rule are set forth in Revenue and Taxation Code

May 22, 1987

sections 64(c) and 64(d). Section 64(c) provides that when any legal entity or any other person obtains "control" which is defined as more than 50% of the corporation stock, a change in ownership of the property owned by the corporation in which the controlling interest is obtained will result. Section 64(d) provides that if property is transferred to a legal entity in a transaction excluded from change in ownership by section 62(a)(2), then whenever shares representing cumulatively more than 50% of the total interest in the corporation are transferred in one or more transactions, a change in ownership of the property which was previously excluded by section 62(a)(2) will result. In the present case, Z is not obtaining "control" under section 64(c), nor obtaining more than 50% of the stock under section 64(d). Therefore, no change in ownership will result. If, however, in a subsequent transaction, Z obtains more Y stock, Z will have more than a 50% interest in Y and will have obtained control of Y resulting in a reappraisal under section 64(c). Further, if any more of Y's stock is transferred to any other person, then cumulatively more than 50% of the stock will have been transferred resulting in a reappraisal under section 64(d).

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 appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

If you have any questions or if you wish to discuss this further, please contact me.

Very truly yours,

Michele F. Hicks
Tax Counsel

MFH:cb
0528D
via FEDERAL EXPRESS

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton

220.0108

Memorandum

To :

Date December 30, 1987

From : Michele F. Hicks

Subject: Change in Ownership of

This is in response to your request that we review the change over of Allstar Inns, an economy motel chain operated in corporate form, , a newly formed limited partnership, and the subsequent sale of limited partnership units, to determine if there has been a change in control. The facts as set forth in letters from company officers and the prospectus are as follows:

S. Holdings, Inc. and its wholly owned subsidiaries S Development Corporation, S O corporation, S P corporation and A , Inc. transferred all of their real property assets to Operating L.P. on April 1, 1987 in exchange for a collective 99% limited partnership interest in Operating L.P. At the same time all of the wholly owned subsidiaries of S Holdings, Inc. were merged into S Holdings, Inc.

Immediately upon the transfer of the real property as evidenced by the deeds, S Holdings, Inc. owned a 99% limited partnership interest in Operating L.P. The only reason that S Holdings, Inc. did not own a 100% interest directly is that under applicable law the general partner of a limited partnership must be different from the limited partner.

The 1% general partnership interest in Operating L.P. is held by G.P., Inc. which is a newly created wholly owned subsidiary of S Holdings, Inc. Therefore, S Holdings, Inc. effectively and absolutely owned 100% of ; Operating L.P. This was 99% directly as limited partner and 1% through its wholly owned subsidiary, G.P., Inc.

On April 3, 1987, the company offered 49.6% of the limited partnership units for sale in a public offering. After the sale of the units offered, the company intends to liquidate and the shareholders will hold in the aggregate units representing 49.4% of the total percentage interest. Our analysis of this transaction is as follows:

1. Transfer of real property from corporation to limited partnership. Revenue and Taxation Code section 62(a)(2) provides that a change in ownership shall not include any transfer between legal entities such as a corporation to a partnership which results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferor and transferees remain the same after the transfer. Before the transfer, the real property was owned by S Holdings, Inc. and its wholly owned subsidiaries. After the transfer the real property was owned by a limited partnership in which G.P., Inc. a wholly owned subsidiary of S Holdings, Inc. is the general partner and S Holdings, Inc. is the limited partner. Therefore, the real property is owned by the same corporation after the transfer as before the transfer. Because the proportional ownership interests are the same, section 62(a)(2) is applicable.
2. Sale of limited partnership units to the public. Revenue and Taxation Code section 64(a) provides that the purchase or transfer of ownership interests in legal entities shall not be deemed to constitute a transfer of the real property of the legal entity. Two exceptions to this general rule are stated in sections 64(c) and 64(d).

Section 64(c) provides that when any person obtains a majority ownership interest in any partnership there is a change in ownership of the property owned by the partnership in which the controlling interest is obtained. In the present case, the company retained 49.4% of the total percentage interests of the partnership as the limited partner and 1% as the general partner. 49.6% of the partnership was sold to other unit holders. Therefore, initially the company has retained control of the partnership and section 64(c) is not applicable.

Revenue and Taxation Code section 64(d) provides that if property is transferred to a legal entity in a transaction excluded from change in ownership by section 62(a)(2), then the persons holding ownership interests of such legal entity immediately after the transfer shall be considered the original coowners. Whenever shares or other ownership interests representing cumulatively more than 50% 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 section 62(a)(2) shall be reappraised. The date of reappraisal shall be the date of the transfer of the ownership interests representing individually or cumulatively more than 50% of the interests in the entity.

As stated above, 49.6% of the units were sold or are being offered to the public. Therefore, at this point, section 64(d) is not applicable since more than 50% would have to be sold. However, if in the future, additional units are sold to the public so that more than 50% of the interests in the partnership will have been transferred, section 64(d) will trigger a reappraisal.

The prospectus states that after the sale of the units offered to the public, the company intends to liquidate and the shareholders will hold in the aggregate units representing approximately 49.4% of the total percentage interest. This liquidation again raises the issue of whether 64(d) is applicable. Previously, 49.6% of the limited partnership units were offered to the public. The additional transfer in liquidation of 49.4% of the units from the company to its shareholders means that 99% of the partnership units have been transferred since the initial section 62(a)(2) transfer. However, it is our position that if the liquidation of the company is proportional, that is, if the shareholders get the same proportional share of partnership units in the partnership as they had in the corporation as shareholders, the liquidation would be excluded by section 62(a)(2). Based on the present information, there is no way we can make this determination.

December 30, 1987

Further, assuming that the liquidation is proportional and there is no present section 64(d) reappraisal, as soon as more than .4% of the partnership units are transferred by the original transferors (now the shareholders who own 49.4% of the units as individuals, and Allstar Inns G.P., Inc. which owns 1% of the units as the general partner), a change in ownership will occur under section 64(d).

MFH:cb
0847D

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson