

# Memorandum

To : Mr. Verne Walton

Date : August 18, 1988

From : Eric F. Eisenlauer

Subject : Change in Ownership of Six HealthTrust Hospitals in California

This is in response to your memorandum to Mr. Richard H. Ochsner of July 28, 1988 in which you request our opinion as to the applicability of Revenue and Taxation Code section 66 (all statutory references are to the Revenue and Taxation Code unless otherwise indicated) to the following facts contained in materials provided with your request.

On September 17, 1987, HealthTrust, Inc. ("HealthTrust") acquired from HCA Investments, Inc. ("HCA11"), a subsidiary of Hospital Corporation of America, corporations owning 104 general acute care hospitals including six located in California and related assets. The purchase price was approximately \$2.0 billion. HealthTrust's only significant assets are the capital stock of its subsidiaries.

To finance the purchase, HealthTrust first borrowed about \$1.6 billion from banks and through the sale of notes and debentures in the financial market. After HealthTrust borrowed the \$1.6 million from outside lenders, it loaned \$809,970,000 to its Employee Stock Ownership Plan ("ESOP"). The ESOP used that money to buy 26,999,000 shares of HealthTrust stock from HealthTrust at \$30 per share--a figure judged to be a fair price by the ESOP's independent financial advisor. Those shares are held by the ESOP trustee, First American Trust Company, and have been placed in a special account as collateral for the ESOP loan. Those shares comprise 90.8 percent of the total outstanding HealthTrust stock.

HealthTrust then used the \$809,970,000 proceeds of the sale of its shares to the ESOP as part of its payment for the assets that it bought from HCA11. The balance of the purchase price came from borrowed funds.

The net result of the foregoing is that the ESOP acquired nearly 91 percent of HealthTrust's stock and HealthTrust acquired all the stock of 104 hospital subsidiaries.

Section 64(c) provides in pertinent part that "[w]hen a corporation . . . obtains control, as defined in Section 25105, in

any corporation . . . through the purchase or transfer of corporate stock . . . , such purchase or transfer of such stock . . . shall be a change of ownership of property owned by the corporation . . . in which the controlling interest is obtained.

Section 66 provides in relevant part that "[c]hange in ownership shall not include . . . . [¶] (c) [a]ny acquisition by an employee benefit plan of the stock of the employer corporation pursuant to which the employee benefit plan obtains direct or indirect control, as defined in Section 25105, in the employer corporation.

"As used in this section, the terms 'employer,' 'employee benefit plan,' . . . shall be defined as they are defined in the Employee Retirement Income Security Act of 1974."

Section 25105 provides that "[d]irect or indirect ownership or control of more than 50 percent of the voting stock . . . shall constitute ownership or control . . . ."

Here, the ESOP, an employee benefit plan for purposes of section 66, gained direct control of the stock of HealthTrust, the employer corporation, through its purchase acquisition of HealthTrust stock directly from HealthTrust. Accordingly, such acquisition by the ESOP is excluded from change in ownership by section 66(c).

Section 66(c), however, does not exclude from change in ownership the acquisition by the employer corporation of the stock of other corporations pursuant to which the employer corporation obtains direct or indirect control in such other corporations. Accordingly, we are of the opinion that a change in ownership occurred under section 64(c) when HealthTrust acquired control of the hospital subsidiaries. Reappraisal would therefore be required with respect to that real property located in California which is owned by any of the subsidiary corporations acquired by HealthTrust.

Although we have assumed for purposes of our analysis that HealthTrust acquired the hospital subsidiaries after the ESOP acquired the HealthTrust stock, we are of the opinion that the result would be the same had HealthTrust acquired the hospital subsidiaries before or at the same time the ESOP acquired the HealthTrust stock.

If you have any further questions regarding this matter, please let us know.

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