



(916) 445-6414

February 6, 1985

Attention:

Dear

This letter is in response to your letter dated November 21, 1984, in which you ask whether the following transaction constitutes a change in ownership. Dr. Bower owns the Cuesta Park Animal Hospital. On February 21, 1984, Stanton E. Bower and Beverly B. Bower, trustees of their own revocable trust, conveyed real property to Stanton E. Bower, Trustee of the Cuesta Park Animal Hospital Pension and Profit Sharing Plan. You ask whether the transfer is an "original contribution of real property" and would be excluded from change in ownership under Rule 462(m)(4).

Rule 462(m)(4) states that the following transfer does not constitute a change in ownership:

Any contribution of real property to an employee benefit plan, or the creation, vesting, transfer, distribution, or termination of a participant's or beneficiary's interest in such a plan. The terms used herein shall have the meaning ascribed to them in the Employee Retirement Income Security Act of 1974, which is codified as United States Code annotated Title 20, Section 1002. (The term "any contribution" as used in Section 66(b) of the Revenue and Taxation Code and this section means only those original contributions of real property made to an employee benefit plan by an employer, a group of employees, or both, without any consideration.)

Mr.

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February 6, 1935

As stated in Rule 462(m)(4), a contribution of real property made to an employee benefit plan by an employer and/or a group of employees is not a change in ownership. You state in your letter that Dr. Bower owns Cuesta Park Animal Hospital. You do not state whether he owns the hospital as the sole shareholder of a corporation or as a sole proprietor. If Dr. Bower is employed by his own corporation, the contribution is made by the corporate employer on behalf of an employee. If Dr. Bower is a sole proprietor, he is treated as both an employee and his own employer. (Internal Revenue Code Section 401(c)(4).) In either case, the contribution would qualify for the Rule 462(m)(4) exclusion if it was made without any consideration and if we determine that a transfer from the Stanton E. Bower and Beverly B. Bower revocable trust was a transfer made by Dr. Bower.

Under Revenue and Taxation Code Section 62(d), any transfer by the trustor, or by the trustor's spouse, or by both, into a revocable trust is not a change in ownership. The trustor is considered to be the owner of the property. (See also Property Tax Assessment, prepared by the legislative committee staff, October 29, 1979, page 25.) This view is consistent with the federal tax laws. Internal Revenue Code Section 676 provides that the grantor of a revocable trust shall be treated as the owner of a trust where he has the power to revest title in himself. You state that Dr. and Mrs. Bower were trustees of "their own revocable trust." We assume that this means they were also the trustors (grantors) of the trust. If Dr. and Mrs. Bower were the trustors of the revocable trust, then they were the owners of the real property owned by the trust. (Revenue and Taxation Code Section 62(d).) Therefore, when Dr. Bower, as trustee, conveyed the property to the pension and profit sharing plan, assuming that the transfer was made without consideration, the transfer was a contribution by Dr. Bower to the plan. It is our opinion that such a transfer would be excluded from change in ownership under Section 462(m)(4).

Lastly, you ask if the transfer would be an "original contribution". We believe that the word "original" in the term "original contribution" in Rule 462(m)(4) is superfluous.. Rule 462 will be amended to reflect recent changes in the law and we intend to drop the word "original" at that time. If you have any questions or wish to discuss this further, please contact me.

Very truly yours,

Michele F. Hicks
Tax Counsel

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