STATE OF CALIFORNIA

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August 1, 1996

In Re: Change in Ownership - Family Partnership Questions and Answers.

Dear Mr. :

This is in response to your June 5, 1996 letter in which you request our opinion concerning the application of the interspousal exclusion, the parent/child exclusion, and the step transaction doctrine to various types of transfers of partnership and real property interests in a family-owned partnership. To maintain clarity and continuity of the actions proposed, our response is set forth in the question/answer analysis hereinafter provided.

The facts described in your letter are as follows:

> X Partnership, a California general partnership, was formed in 1975 and acquired ownership of real property in Orange County. The original partners owned the following capital and profits interests in Partnership: Father - 70%; his wife (Mother) - a community property interest in his share; Son 1 - 10%; Son 2 - 10%; Son 3 - 10%.
>
> Father died in 1986. Through a spousal property order issued by the Probate Court, Mother acquired ownership of Father's 35% community property interest in Partnership, in addition to her 35% community property share, resulting in Mother owning a 70% interest in Partnership. Although Partnership was to dissolve upon the death of any partner, title to the real property remains in Partnership.

You have raised three questions with regard to 1) the transfer of partnership interests to Mother as the result of Father's death, 2) transfers resulting in the partners acquiring "original coowner" status, and 3) steps for transferring real

property representing partnership interests to Sons and Daughter for the purpose of applying the parent/child exclusion. Each question is set forth below with an answer and thorough explanation as requested.

Question 1. Does Section 63 exclude from change in control the transfer of Father's 35% partnership interest to Mother upon Father's death?

Yes.

In our view, the interspousal exclusion in Section 63 is applicable to all transfers between spouses, including transfers of interests in legal entities. We adhere to this position because of the express language of Section 63 adopted by the Legislature, the historical development of the exclusion, and the long-standing administrative and judicial construction interpreting and applying the statute since its 1979 enactment.

There is no question that the Section 63 language is very broad and specifically includes transfers resulting from the death of a spouse, quoted in pertinent part as follows:

> "Notwithstanding any other provision in this chapter, a change of ownership shall not include any interspousal transfer, including but not limited to:
>
> * * *
>
> (b) Transfers which take effect upon the death of a spouse."

The choice of such broad language was intentional. The interspousal exclusion was created and drafted along with numerous other change in ownership exclusions, following the adoption of Proposition 13, through the joint efforts of the Task Force on Property Tax Administration, Assembly Committee on Revenue and Taxation in 1979. Because of Task Force recommendation and popular demand, the Legislature placed the interspousal exclusion in its own statutory section (Section 63) in the Revenue and Taxation Code, as a "deliberate carved out exception" to change in ownership.

The language used and ultimately adopted was recognized at the time as totally unique in two ways: (1) it "borrows" the joint tenancy concept that for change in ownership purposes each spouse owns separate interests in property, and (2) it simultaneously makes a radical departure from the change in ownership definition by granting a broad exclusion for any transfers of such interests between spouses. In the Report of

the Task Force on Property Tax Administration, Assembly Committee on Revenue and Taxation, July 1979, p.44, the following explanation of the interspousal exclusion was set forth:

> "The one exclusion from change in ownership which is not consistent with the 3-element definition [of change in ownership] is interspousal transfers. They are therefore provided for separately (proposed Section 63) rather than being one of the examples of exclusions under the general test.
>
> "The Task Force saw no policy reason for limiting the interspousal exclusion to community property and joint tenancy interests. If, for example, a husband left separate real property to his wife by will, rather than putting it in joint tenancy with her, there seemed to be no reason why the transfer on the husband's death should have two opposite results. Thus, all interspousal transfers were excluded." (See Report of the Task Force on Property Tax Administration, Assembly Committee on Revenue and Taxation, July 1979, p.44.)

Shortly thereafter, in the formal report issued by the Assembly Revenue and Taxation Committee, entitled "Property Tax Assessment" Volume 1, October 29, 1979, on page 20, the Committee stated:

> "Interspousal Transfers"
>
> "All transfers among spouses are excluded from change in ownership, including transfers taking effect upon the death of a spouse, or transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation. **This provision overrules any other provisions described hereafter regarding definition of a change in ownership** (Section 63). [Emphasis added.]
>
> "Without this provision certain types of property transfers, e.g., community property or joint tenancy interests would be exempt, while other property, such as separate property left by will, would be subject to change in ownership. This was the result of the exemption provided originally under SB 154. Since the blanket interspousal exclusion of AB 1488 is not consistent with the basic definition contained therein, it is set forth in a separate section."

Several amendments further broadened Section 63. The first phrase in Section 63, prior to its amendment by Assembly Bill 152

(Stats. 1981, Ch. 1141) stated, "Notwithstanding Sections 60, 61, 62, and 65, a change in ownership shall not include **any interspousal transfer,...**". The new language in AB 152 in 1981, deleted the words, "Sections 60, 61, 62, and 65," and added the words, "any other provision in this chapter," as follows:

> "Notwithstanding any other provision in this chapter, a change in ownership shall not include **any interspousal transfer**, including, but not limited to..."

Also added by AB 152 was the language in subdivision (e), which extended the exclusion to transfers related to marital dissolution and property settlement matters, and states:

> "(e) The distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of such spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation."

In recommending the broader language of AB 152 to the Senate Committee on Revenue and Taxation, the State Board of Equalization stated in its Legislative Analysis, August 13, 1981, that the intent was as follows:

> "4. Spousal Exclusion (Section 63)
> Provides that exclusion takes precedence over all other provisions of the chapter, and that the distribution of a legal entity's property (e.g., corporation, partnership) upon divorce is included within this exclusion."
>
> "The first change is clarifying of the original intent; by formerly specifying only certain sections, the implication was that any section not so specified would overrule the spousal exclusion. This was never intended. The second change also clarifies the existing exclusion as it applies to property settlement agreements."

Shortly thereafter, the question of application arose as to what action an assessor should take regarding the ownership interests of the wife in husband's stock (and ultimately in the control of the corporation) where both held community property interests in the property at husband's death. In a letter by Verne Walton on February 27, 1981, (copy enclosed), he stated that "Such a transfer would be excluded from reappraisal." Even though the shares were held solely in husband's name, the transfer of all of the shares to wife upon the husband's death was excluded from change in ownership and from change in control (Section 64(c)) by Section 63.

Because of the basic principle in Section 63 described above, that shares, partnership interests, and/or real property held by spouses as community property were treated as the property of each of them as separate persons, we have consistently concluded that whenever there is an acquisition or transfer of stock or partnership interests between spouses, no change in ownership has resulted. Thus, the basic application made in the 1981 Walton letter has been followed over the years. Subsequent advice from our staff in numerous opinion letters and letters to assessors, such as Letter to Assessors Only No. 83/17, and Letter to Assessors No. 85/33, reflects this principle regarding the interspousal exclusion.

In the instant case, the language in Section 63(b) is clearly applicable to the transfer of Father's 35% (community property) partnership interest to Mother, as "transfers which take effect upon the death of a spouse." Father and Mother held the 70% interest in Partnership as community property from its inception, leading to the conclusion (per Letter to Assessors No. 85/33) that each of them owned 35% and that neither had control of Partnership. Even though the transfer to Mother upon Father's death of his 35% interest would have resulted in a change in control of Partnership under Section 64(c), the broad language of Section 63 which includes "any interspousal transfer" is the relevant exclusion. Were we to conclude otherwise, then in all spousal situations where husband and wife collectively share more than 50% of the ownership interests in a legal entity and one spouse dies, there would be a change in control of the legal entity (and reappraisal of the real property owned by that entity). Such a result would be inconsistent with the underlying intent of the interspousal exclusion and the administration of its provisions.

We are aware that there has been some controversy among assessors and taxpayers in recent years focusing on the application of Section 63 to transfers of stock or partnership interests because of the particular language used in the exclusion in Article XIII A, Section 2(g) of the Constitution. That language, adopted as part of Proposition 58, states that "...'change in ownership' shall not include **the purchase or transfer of real property between spouses**..." (Art. XIII A, Sec. 2(g).)

The express purpose of Proposition 58 was, among other things, "to place the statutory treatment of property transfers between spouses under Section 63 into the Constitution." ("Analysis of Legislative Analyst," Ballot Pamphlet, Proposed Amendment to California Constitution with Arguments to Voters,

Taxation [of] Family Transfers, General Election (Nov. 4, 1986), p.24.) Under the "existing statutory treatment of property transfers between spouses" in Section 63, the language provided specifically for the exclusion of "**any interspousal transfer.**"

Subsequent to the adoption of Proposition 58, the staff of the State Board of Equalization became aware that some assessors interpreted the constitutional language as a contradiction to the plain meaning of the phrase "any interspousal transfer" in Section 63, and suggested that in case of doubt, the constitutional provision should take precedence over the statute. Therefore, in our subsequent interspousal opinion letters provided to taxpayers, county assessors, legislators, etc., we qualified our advice by cautioning that this matter was not free from doubt and that some assessors might conclude that interspousal transfers of interests in legal entities were not excludable under Section 63. Having been requested by the Modoc County Assessor this year to research this question in application to a transaction there, (Cazadd Letter, May 20, 1996), we now believe that the historical evidence, legislative intent, as well as legal principles relating to statutory interpretation, establish that there is no contradiction. First, there is no indication in the ballot pamphlet or in any of the legislative history of Proposition 58, that it would modify existing law and narrow its application to only literal real property transfers between spouses. Secondly, the interspousal exclusion in Section 63 experienced a long history (1979) prior its 1986 incorporation into the Constitution under Proposition 58. During this time, substantial clarity regarding its interpretation and application had developed, both from the advice of our staff and decisions made by assessors, that established a standard exclusion for transfers of interests in legal entities between spouses, and which, in effect, constituted seven years of consistent administrative interpretation. Finally, court decisions dealing with similar problems in property tax matters have held that the terms used in a constitutional amendment must be construed in the light of their meaning at the time of adoption of the amendment. In Larson v, Duca (1989) 213 Cal.App.3d 324,329, the court dealt specifically with Proposition 58 and stated,

> "In interpreting constitutional measures enacted by the voters, we must also follow the rule that 'the electorate would be deemed to know' the state of the law prior to the enactment. 'The adopting body is presumed to be aware of existing laws and judicial construction thereof.' [citation]"

Based on the foregoing, we have altered our view and take the position that there is no contradiction of terms between the

language in Section 63 and in Art.XIII A, Sec. 2(g) and that they are consistent. The interspousal exclusion codified in Section 63 was well known to taxpayers and assessors at the time Proposition 58 was approved by the voters, and many nuances of its interpretation had been applied for over seven years. It is reasonable to assume that the voting public had come to expect that all transfers between spouses were excluded from change in ownership and that Proposition 58 simply memorialized that in the Constitution. While such factors are not binding on assessors, we believe that they are entitled to great weight.

Question 2. Would transfer(s) occurring on Father's death result in remaining partners becoming "original co-owners under Section 64(d)?

No.

As you are aware, Section 62(a)(2) excludes from change in ownership:

> Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, 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, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer. The provisions of this paragraph shall not apply to transfers also excluded from change in ownership under the provisions of subdivision (b) of Section 64.

The statutory provisions of Section 62(a)(2) have been interpreted by Property Tax Rule 462.180, subdivision (b)(2), which also identifies and defines "original co-owners." The rule states in pertinent part:

> [Excluded from the change in ownership provisions are] transfers of real property between separate legal entities or by an individual(s) to a legal entity (or vice versa), which result solely in a change in the method of holding title and in which the proportional ownership interests in the property remain the same after the transfer. (The holders of the ownership interests in the transferee legal entity, whether such interests are represented by stock, partnership shares, or other types of ownership interests, shall be defined as "original co-owners" for purposes of

determining whether a change in ownership has occurred upon the subsequent transfer(s) of the ownership interests in the legal entity.)

Based upon the foregoing, "original co-owners" are owners of interests in a legal entity which has acquired ownership of real property in a transaction excluded from change in ownership by Section 62(a)(2). As an example included in the statutory language, where a transfer is excluded from change in ownership under Section 64(b), rather than under Section 62(a)(2), there are no "original co-owners" interests created, and Section 64(d) would not become applicable as a result of that transfer. Further, in defining "original co-owners" in Section 64(d), the express language therein refers exclusively to Section 62(a)(2), implying that transfers excluded from change in ownership under other statutory exclusions do not result in the owners being identified as "original co-owners."

Section 64, subdivision (d), states in pertinent part:

> 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 that legal entity immediately after the transfer shall be considered the "original co-owners." Whenever shares or other ownership interests representing cumulatively **more than 50 percent of the total interests** in the entity are transferred by any of the **original co-owners** 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.

In the facts provided here, there is no indication that any of the transfers either to or from the Partnership had been excluded from change in ownership under Section 62(a)(2). Father transferred the real property into the Partnership prior to the advent of Proposition 13. Even if Mother had not had a community property interest in Father's share, a subsequent transfer from Father to Mother would have been excluded from change in ownership under Section 63, not under Section 62(a)(2). Similarly, when Father died and his community property interest transferred to Mother, the interspousal exclusion was applicable.

With regard to your concern that "the County could reason that the Partnership was technically dissolved and reformed by the new partners (including Mother)," such a conclusion depends

upon a clear delineation of the facts surrounding the transaction at the time. We have consistently taken the position that once property is acquired by a partnership, the composition and nature of the interests held by the partners are defined by the terms of the particular partnership agreement. Where the specific terms of the agreement express the intentions of the partners with regard to the partnership's dissolution and the character of their capital and profits interests upon the death of a partner, reliance on these terms is essential to reach a final determination as to change in ownership. Where there is no partnership agreement, then the provisions of the Uniform Partnership Act (Corporations Code Sections 15020-15045) authorize the dissolution of a partnership upon the death of a partner, with the requirement that the surviving partners have the exclusive right to continue in possession and control all of the partnership property until the affairs of the partnership are wound up. Unless empowered by a court to act as the personal representative of the deceased partner, however, no surviving partner receives a vested or beneficial interest in the partnership share or assets of the deceased partner.

We have not been apprised of the existence of a partnership agreement in the instant case, nor have we received any information concerning the dissolution and winding up of its affairs. Rather, the facts submitted state that "the property was never deeded out of the original Partnership," indicating that no transfers occurred, other than the 35% transfer of partnership interests upon Father's death to his spouse. In order for the surviving partners to have acquired "original co-owner" status, there should be some facts establishing that upon Father's death the Partnership dissolved and there was a distribution and/or transfer to each of the partners and to Father's heirs in exactly proportionate shares, utilizing the exclusion in Section 62(a)(2).

3. Does the parent/child exclusion apply if the steps taken by surviving spouse, Sons and Daughter conform to the statement of Legislative intent following Section 63.1?

Yes.

You request that following Father's death, we should assume that Mother transferred a total of 49.5% of the Partnership interests to her Sons and Daughter, with the result that Son 1, Son 2, and Son 3 each own 19.5%, Daughter owns 11%, and Mother owns 30.5% of Partnership. [The percentage attributed to Mother in your letter was 20.5%, which we changed to 30.5% in order to properly account for 100% of the total Partnership interests.]

The partners propose to take the following steps in order to avoid a change in ownership and to apply the parent/child exclusion:

Step 1: Partnership deeds 30.5% of the real property outright to Mother applying the Section 62(a)(2) exclusion.

Step 2: Mother transfers her 30.5% interest in real property to Sons and Daughter as equal co-tenants utilizing the parent/child exclusion.

Step 3: The Sons and Daughter transfer their respective shares of the 30.5% interest back to the Partnership in exchange for exactly proportionate interests in the Partnership capital and profits, utilizing again the Section 62(a)(2) exclusion.

Following the completion of this transaction, Son A wishes to transfer a 5% partnership interest to his spouse, who shares a community property interest in his percentage of the Partnership. Son B also intends to transfer a 5% partnership interest to his wife, incident to their divorce and property settlement agreement.

Your concern is two-fold: 1) that the parent/child exclusion would exclude the proposed transfers from change in ownership, 2) that cumulative transfers exceeding 50% of the total Partnership interests would not trigger a change in ownership under Section 64(d).

As you are aware, the parent/child exclusion in Proposition 58, approved by the voters on November 6, 1986, in Section 2(h) of Article XIII A of the California Constitution, provides that "...'change in ownership shall not include ... the purchase or transfer of the first one million dollars of the full cash value of all other real property between parents and their children, as defined by the Legislature." The language of Section 63.1, adopted by the Legislature as the implementing statute, applies the exclusion to transfers or the first $1 million dollars in full cash value of real property between parents and their children, providing that in each case, an "eligible transferor" transfers real property to an "eligible transferee." Per the statutory definitions, subdivisions (a) and (c) of Section 63.1 provides in relevant part:

> (a) Notwithstanding any other provision of this chapter, a change in ownership shall not include either of the following purchases or transfers for which a claim is filed pursuant to this section:

* * *

(2) The purchase or transfer of the first one million dollars ($1,000,000) of full cash value of all other **real property** of an eligible transferor in the case of a purchase or transfer **between parents and their children.**

(c) As used in this section:

(1) "Purchase or transfer between parents and their children" means **either a transfer from a parent or parents to a child or children of the parent or parents or a transfer from a child or children to a parent or parents of the child or children.**

Per your description, Partnership will transfer to Mother in the first step a 30.5% interest in the real property in exchange for her 30.5% Partnership interest, and Mother will transfer to Sons and Daughter in the second step, equal shares in her 30.5% **interest in real property**, rather than an interest in the Partnership. Thus, the first two steps permit Mother to become the **eligible transferor** of the **real property** at the time of the transfer to her Sons and Daughter, **not** the Partnership. The exclusion under Section 62(a)(2) would exclude the step 1 transfer from change in ownership, providing that the proportional interests of the transferors and transferees are exactly the same after the transfer. Assuming Mother holds a 30.5% partnership interest before the transfer and a 30.5% real property interest after the transfer, step 1 is merely a change in the method of holding title to the real property and in which the proportional ownership interests remain the same.

Mother's subsequent step 2 transfer of her 30.5% interest in real property to each of her Sons and Daughter in equal shares would be a change in ownership under Section 61(e), except for the application of the parent/child exclusion. Step 2 would qualify for the parent/child exclusion because Mother's 30.5% interest at the end of step 1 is no longer in the Partnership, but in real property. Mother, not the Partnership, is the transferor and is therefore an "eligible transferor." Mother's transfer will be made to each of the Sons and Daughter as individuals in tenancy-in-common ("eligible transferee"). Accordingly, Mother's transfer to Sons and Daughter may qualify for the parent-child exclusion, if a claim is timely filed.

The proposed third step contemplates the retransfer by each of the Sons and Daughter of their respective real property interests received from Mother (in Step 2) to the Partnership in

exchange for partnership interests in the same proportionate shares. The Sons and Daughter intend to exclude this third step from change in ownership under Section 62 (a)(2), since their respective proportional ownership interests in Partnership's capital and profits will be identical to their interests in the real property before and after the transfer. The use of this exclusion, however, will place each partner in the position of becoming an "**original co-owner**" under Rule 462.180(b)(2) for purposes of determining the change in ownership consequences of any subsequent transfers of each partner's respective partnership interests.

Since the partners are undertaking several steps to transfer real property to and from Mother to themselves and then back to the Partnership, presumably to utilize the parent-child exclusion, the application of the "step transaction doctrine" is in issue. Mother obviously will have undertaken an **extra step** to effect the transfer to her Sons and Daughter which allows them use of the parent-child exclusion.

The "step transaction doctrine" has been applied to property tax transfers when unnecessary steps are taken merely to circumvent the intent of the change in ownership statutes; in which case, the "substance of the transaction, rather than the form" will determine if a change in ownership has actually occurred. (Shuwa Investment Corp. v. County of Los Angeles (1991) 1 Cal. App. 4th 1635). Per your request for our opinion regarding the application of the legislative comment on the step transaction doctrine following Section 63.1, in Letter to Assessors No. 87/72, September 11, 1987, Question 6 (page 8, enclosed), we initially discussed this statement, pointing out that it **allows** the use of the parent/child exclusion for **certain** step transactions.

Quoting directly from LTA No. 87/72, in the answer to Question 6, we stated:

> This exclusion applies only to transfers of real property (not ownership interests in entities which own real property) between individuals who are parents or children (not entities which are owned by parents and children). Chapter 48 [of the Statutes of 1987, AB 47] includes a statement of legislative intent to allow this exclusion for certain step-transactions. For example, Corporation A (wholly owned by parents) transfers real property to parents who then transfer the same real property to son who transfers the same real property to Corporation B (wholly owned by son). In order to carry out the purpose of Chapter 48, the transfer from the parents to the son is deemed to

qualify for the exclusion even though the application of the step-transaction doctrine might reach a different conclusion.

Since that time, we have indicated that this exception to the step transaction doctrine occurs **only** when a taxpayer selects the form for a transaction which is consistent with the apparent legislative intent. The legislative intent underlying Section 63.1 in regard to the whether the step transaction doctrine should be applied in parent/child transaction is clearly stated in Section 2 of Chapter 48 of the Statutes of 1987 through specific examples. As indicated in the following quoted language, Section 2 does expand/extend the exclusion by overlooking the step transaction doctrine in situations where parents and/or children are the **sole** owners of the real property:

> "... it is the intent of the Legislature that the provisions of Section 63.1 of the Revenue and Taxation Code shall be liberally construed in order to carry out the intent of Proposition 58 on the November 4, 1986, general election ballot to exclude from change in ownership purchases or transfers between parents and their children described therein. Specifically, transfers of real property from a corporation, partnership...to an eligible transferor or transferors, where the latter are the **sole** beneficial owner or owners of the property, shall be fully recognized and shall not be ignored or given less than full recognition under a substance-over-form or step transaction doctrine, where the **sole** purpose of the transfer is to permit an immediate retransfer from an eligible transferor or transferors to an eligible transferee or transferees which qualifies for the exclusion from change in ownership provided by Section 63.1. Further, transfers of real property between eligible transferors and eligible transferees shall also be fully recognized when the transfers are immediately followed by a transfer from the eligible transferee or eligible transferees to a corporation, partnership, trust, or other legal entity where the transferee or transferees are the sole owner or owners of the entity or are the sole beneficial owner or owners of the property, if the transfer between eligible transferors and eligible transferees satisfies the requirements of Section 63.1. Except as provided herein, nothing in this section shall be construed as an expression of intent on the part of the Legislature disapproving in principle the appropriate application of the substance-over-form or step-transaction doctrine. (Emphasis added.)

Based on the foregoing, it has been our position that an exception to the step transaction doctrine occurs **only** where the transfers made to take advantage of the parent-child exclusion are both **consistent** with the legislative intent and **parallel** the examples. The language quoted above describes a situation which seems consistent with the transfers you have described. The example refers to a qualifying parent-child transfer of real property from a partnership to an eligible transferor where the sole purpose of the transfer is to permit an immediate re-transfer from an eligible transferor to an eligible transferee or transferees, then the transfer of the property to a legal entity in which the transferee or tranferees are the **sole** beneficial owner or owners. This is analogous to the steps proposed in your letter. Partnership transfers real property to Mother (under section 62(a)(2)) who is the eligible transferor, who thereafter transfers the real property to eligible transferees (Sons and Daughter), who in turn, retransfer the real property to Partnership in exchange for proportionate partnership interests. Thus, the described steps appear to fall within the express intention of the Legislature, and for that reason the step transaction doctrine may not apply.

After the completion of the three steps, you indicate that Son 1 (Son A) and Son 2 (Son B) intend to transfer a 5% partnership interest to their spouse and/or ex-spouse respectively. On page 4 of your letter, you set forth a series of steps to accomplish these spousal transfers, similar to those conforming with the statement of legislative intent in Section 63.1. As noted above, however, the steps described in the legislative intent are for the purpose of allowing the application of the parent/child exclusion only and do not apply to the interspousal exclusion in Section 63. The sole issue regarding the spousal transfers of Partnership interests by Son 1 and Son 2 is whether the interspousal exclusion under Section 63 is applicable. For the reasons discussed in Question 1, we believe that Section 63 does exclude from change in ownership any transfers between spouses including transfers of interests in legal entities.

Moreover, even if the interspousal exclusion were not applicable, both of these transfers involve partnership interests, rather than real property, and appear to fall within the provisions of Section 64(a). As stated in Section 64(a), 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," except as provided in Section 61(h) or subdivisions (c) and (d) of Section 64. Based upon the facts submitted, no person or entity would obtain control of the Partnership per Section 64(c) as the result of the two Sons' 5%

partnership interest transfers to their spouses. And the result cumulatively is that only 10% of the partnership interests would be transferred by the original coowners, thereby not enough to trigger a change in ownership under Section 64(d). While the 10% cumulative transfer could "count" toward the calculation of more than 50% of the total partnership interests transferred, there would not be a change in ownership from the two Sons' spousal transfers.

The views expressed in this letter are, of course, advisory only and are not binding on the assessor of any county. You may wish to consult again with the appropriate assessor in order to resolve any remaining factual determinations and to confirm that the described properties will be assessed in a manner consistent with the conclusions stated herein.

Our intention is to provide courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this objective are appreciated.

Sincerely,

Kris Cazadd

Kristine Cazadd
Senior Tax Counsel

KEC:ba
Attachments
cc: Honorable
County Assessor

Mr. James Speed, MIC:63
Mr. Richard Johnson, MIC:64
Ms. Jennifer Willis, MIC:70

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February 22, 2007

Honorable Webster J. Guillory
Orange County Assessor
12 Civic Center Plaza
630 N. Broadway, Room 142
Santa Ana, CA 92702-0149

Attention: Mr.

Re: Annotation 220.0211's Effect on Annotation 220.0278

Dear Mr. :

This letter responds to your December 27, 2006 inquiry regarding two property tax annotations[1] applying Revenue and Taxation Code[2] section 63, Interspousal Transfers. As discussed in more detail below, the State Board of Equalization's Legal Department still holds the opinion expressed in annotation 220.0278, regarding transfers to legal entities, and is not of the opinion that annotation 220.0211, regarding the transfer of an interest in a legal entity, affects the conclusion reached in annotation 220.0278.

Annotation 220.0278 provides that "Revenue and Taxation Code section 63 does not apply to a transfer from a husband and a wife to a corporation, a legal entity, wholly owned by wife."

The May 14, 1993 letter[3] from which the conclusion in annotation 220.0278 is drawn provides that section 63 does not apply to a husband and wife's transfer of their respective community property interests in real property to a corporation wholly owned by the wife. The letter explains that section 63 does not apply because the spouses' transferred their real property interests to a corporation, a separate legal entity, not between themselves, and therefore did not conduct an "interspousal transfer" within the meaning of section 63. This conclusion is

[1] 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, § 5200 for more information regarding annotations.)
[2] All further statutory references are to the Revenue and Taxation Code unless otherwise specified.
[3] Available on the Board's website at: http://www.boe.ca.gov/proptaxes/pdf/220_0278.pdf.

consistent with the Legal Department's earlier opinion that corporations, partnerships, and other legal entities are not spouses for purposes of applying section 63, as stated in the letter which formed the basis for annotation 220.0274.[4]

Annotation 220.0211 provides as follows:

> When a surviving spouse acquires majority ownership of a partnership, through the spousal property order of the probate court granting her the deceased spouse's community property interest, the change in control of the partnership is not a change in ownership triggering reappraisal for property tax purposes. The interspousal transfer exclusion of Revenue and Taxation Code section 63 applies to the transfer.

The August 1, 1996 letter[5] from which the conclusion in annotation 220.0211 is drawn, explains that section 63 was intended to apply to "all transfers between spouses, including transfers of interests in legal entities." This conclusion is consistent with Property Tax Rule[6] 462.220, subdivision (a), which specifically provides that a change in ownership does not include "Transfers of ownership interests in legal entities" between spouses.

Thus, the two annotations do not affect each other's conclusions. Annotation 220.0278 concludes that there is no transfer between spouses, and therefore no "interspousal transfer" within the meaning of section 63, where one or both spouses transfer real property to a separate legal entity, not the other spouse. Annotation 220.0211 concludes that section 63 applies to all transfers between spouses, including transfers of ownership interests in legal entities between spouses. Therefore, the two annotations deal with different types of transfers, and reach different conclusions regarding the application of section 63.

I hope this answers your questions. If you require further guidance or have additional questions, please call me or write to the Legal Department again. The views expressed in this letter are only advisory in nature. They represent the analysis of the Legal Department based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Bradley Heller

Bradley Heller
Senior Tax Counsel

BH:pb
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cc: Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70

[4] Available on the Board's website at: http://www.boe.ca.gov/proptaxes/pdf/220_0274.pdf.
[5] Available on the Board's website at: http://www.boe.ca.gov/proptaxes/pdf/220_0211.pdf.
[6] All Rule references are to California Code of Regulations, title 18.