

220.0277 **Interspousal Transfers.** Changes in ownership of real properties do not occur upon the transfers of the properties from Husband (H) and Wife (W), each with one-half community property interests in each parcel, to H's and to W's respective living trusts in which H and W are the respective sole present beneficiary (Revenue and Taxation Code section (d)); upon the transfers of the properties from H's and W's respective trusts to H's and W's separate California corporations wholly owned by each respective trust (Revenue and Taxation Code section 62(a)(2)); and upon the transfers of the properties from H's and W's corporations and from another California corporation that is a wholly-owned subsidiary of a corporation in which H and W are the sole shareholders with community property one-half stock interests therein to a new limited partnership formed by H and W (section 62(a)(2)). While the proportional ownership interests in the real property of each of the corporations (via their partnership interests) would be different after the transfers to the partnership than they would be prior to such transfers, proper application of section 62(a)(2) requires a determination of whether the proportionality of H's and W's ownership interests would remain the same after the transfers. As the sole present beneficiary of a trust is the sole beneficial owner of the real property for change in ownership purposes, where the owner of real property transfers it to a trust in which he or she is the sole present income beneficiary, the proportional ownership interest in the real property remains the same after the transfer for purposes of section 62(a)(2), i. e., the beneficiary is the sole beneficial owner of the property transferred before and after the transfer to the trust. Accordingly, since the proportional interests of H and W in each of the parcels of real property transferred to the newly formed partnership would remain the same after such transfers, section 62(a)(2) would apply to exclude such transfers from change in ownership. C10/30/90. (M99-1)



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October 30, 1990

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Re: Ruling Request

Dear Mr

This is in response to your letter of August 2, 1990 to Mr. Richard Ochsner in which you request our opinion as to whether the following contemplated transaction would constitute a "change of ownership" for California property tax purposes.

FACTS: Your clients, Tien P. Zee ("Zee") and his wife, Kimiko, own numerous parcels of land in Southern California. Each owns a community property one-half interest in each of the properties. In addition, Zee and his wife Kimiko are the sole shareholders of INTEX CORP., a California corporation whose wholly-owned subsidiary, Intex Properties Corp., also owns numerous parcels of real property in California. Zee and his wife each own a community property one-half interest in the stock of INTEX.

PROPOSED TRANSACTION: Zee and his wife wish to combine ownership of the California real properties that they own in their own names with the California real properties that are owned by the subsidiary of their wholly-owned corporation. It has been proposed that the Zees and Intex Properties Corp. form a new California limited partnership to be known as Intex Properties Partners Limited, a California Limited Partnership, as follows:

(1) First, Tien P. Zee would transfer his community property one-half interest in the California real properties into a living trust in which he is the sole present beneficiary. His wife, Kimiko, would likewise transfer her community property one-half interest into a living trust in which she is the sole present beneficiary.

(2) Zee's trust would transfer his one-half interest in the California real properties into a

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wholly-owned California corporation called TELDA LIMITED. Kimiko's trust would transfer her one-half interest in the properties into a separate California corporation wholly owned by her trust and known as PHALA LIMITED.

(3) TELDA LIMITED, PHALA LIMITED, and INTEX PROPERTIES CORP. would each transfer all of their California real properties into the new partnership to be known as INTEX PROPERTIES PARTNERS LIMITED, a California Limited Partnership. The percentage interest that each would acquire in the new partnership would be based upon the relative fair market values of the properties each contributed to the partnership and their obligations to make further contributions to the partnership. The new partnership would then jointly develop those properties. A chart outlining this proposed transaction is attached.

LAW AND ANALYSIS:

Revenue and Taxation Code<sup>1</sup> section 60 defines "change in ownership" as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest".

Section 61 provides in relevant part that "[e]xcept as otherwise provided in section 62, change in ownership, as defined in section 60, includes, but is not limited to: \*(i) [t]he transfer of any interest in real property between a corporation, partnership or other legal entity and a shareholder, partner, or any other person."

Section 62 (a)(2) excludes from change in ownership "[a]ny 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

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All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

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same after the transfer". See also Property Tax Rule 462(j)(2)(B).

Section 62(d) also excludes from change in ownership "[a]ny transfer by the trustor \*\*\* into a trust for so long as (1) the transferor is the present beneficiary of the trust, \*\*\*". See also Property Tax Rule 462(i)(2)(A).

The first step of the proposed transaction is the transfer by Zee and his wife of their respective 50% interests in the community real property into living trusts in which each is the sole present beneficiary. As indicated above, such transfers are excluded from change in ownership by section 62(d)(1) and Property Tax Rule 462(i)(2)(A).

The second step of the proposed transaction is the transfer of each spouse's 50% real property interest from their respective trusts to a separate California corporation, 100% of the stock of which is owned by that spouse's trust. As indicated above, section 62(a)(2) and Property Tax Rule 462(j)(2)(B) exclude from change in ownership transfers of real property between legal entities or by an individual to a legal entity 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 proposed transfer falls squarely within those provisions and therefore would be excluded from change in ownership.

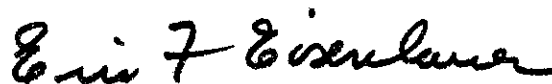
The final step is the transfer of properties by the three corporations into the newly created partnership. We recognize that the proportional ownership interests in the real property of each of the corporations (via their partnership interests) would be different after the transfers to the partnership than they would be prior to such transfers. It could therefore be argued that section 62(a)(2) does not apply to such transfers. It is our opinion, however, that proper application of section 62(a)(2) requires a determination of whether the proportionality of the Zees would remain the same after the transfers. We have taken the position that the sole present beneficiary of a trust is the sole beneficial owner of the real property for purposes of Proposition 13. Thus, we are of the view that where, as here, the owner of real property transfers it to a trust in which he or she is the sole present income beneficiary, the proportional ownership interest in the real property remains the same after the transfer for purposes of section 62(a)(2), i.e., the beneficiary is the sole beneficial owner of the property transferred before and after the transfer to the trust. Accordingly, since the proportional

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interests of the Zees in each of the parcels of real property transferred to the newly formed partnership would remain the same after such transfers, section 62(a)(2) would apply to exclude such transfers from change in ownership.

The views expressed in this letter are advisory only and are not binding on the assessor of any county. Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours

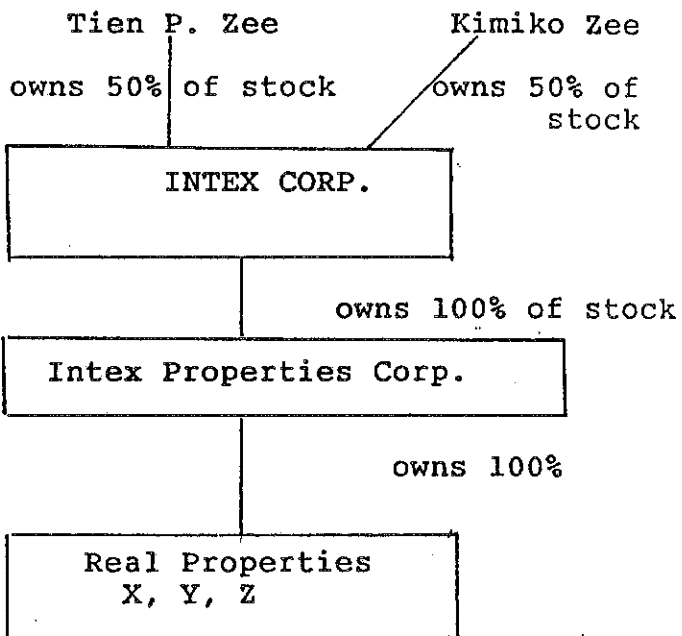
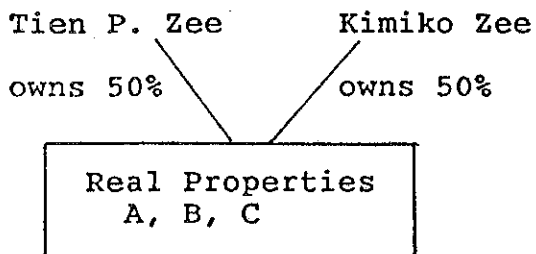


Eric F. Eisenlauer  
Tax Counsel

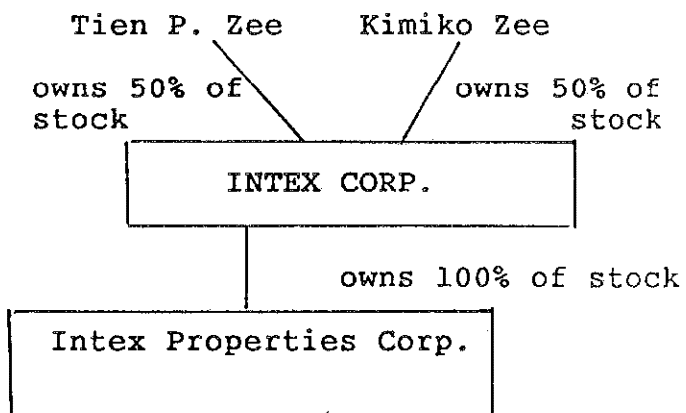
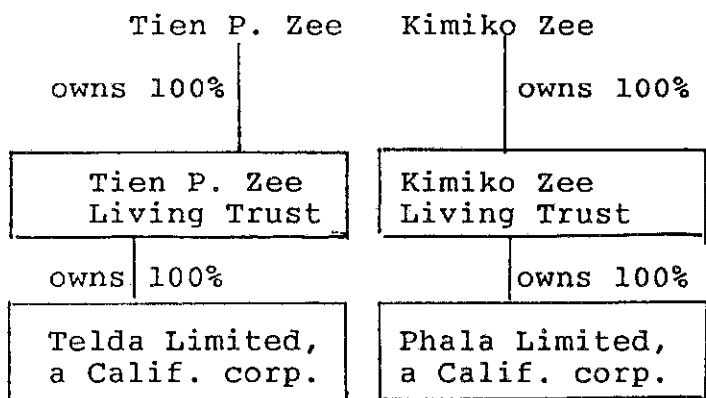
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cc: Mr. John W. Hagerty  
Mr. Verne Walton

BEFORE



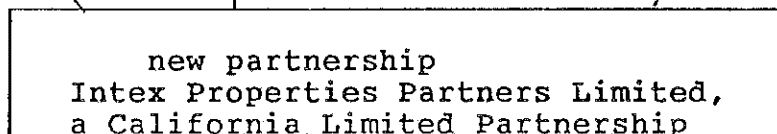
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