



STATE BOARD OF EQUALIZATION

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February 23, 2010

Re: *Change in Ownership – Manager Managed LLCs*
Assignment No.: 09-215

Dear Mr. _____ :

This is in response to your letter dated October 6, 2009 to the California State Board of Equalization requesting an opinion as to whether there would be a change in ownership of properties owned by various legal entities if those entities become manager managed rather than remain member managed. As discussed below, it is our opinion that there would not be a change in ownership since there will not be a transfer of any ownership interests as part of the transition from member managed to manager managed entities.

FACTS

You present two situations in your letter; the situations are similar but not identical.

Situation 1 involves three identical fact situations concerning three separate single purpose California limited liability companies (LLCs). Each entity is the owner of a multi-residential improved real property located in _____, California (Properties). The sole member of each LLC is a Family Trust. Each LLC desires to change from being member managed to manager managed. The sole member of each LLC intends to appoint a California corporation as manager. The manager will have no ownership interest in the LLC.

Situation 2 involves nine identical fact situations concerning nine separate California Limited Partnerships. Each Limited Partnership (Partnership) owns a multi-residential improved real property located in Los Angeles County, California (Properties). Each Partnership has two partners: a general partner that holds an eighty percent (80%) partnership interest, and a limited partner that holds a twenty percent (20%) partnership interest. The general partner of each Partnership is a member managed California LLC, and one hundred percent (100%) of the membership interests are held by the Trustees of a Family Trust. Each of the nine general partner LLCs desires to change from being member managed to manager managed. The sole member of each general partner LLC intends to appoint a California corporation as its manager. The managing corporation will have no ownership interest in the LLC.

LAW

Section 17151, subdivision (a) of the California Corporations Code states that the articles of organization of an LLC may provide that the business and affairs of the LLC shall be managed by or under the authority of one or more managers who may, but need not, be members. And subdivision (c) of section 17151 of the California Corporations Code states that the articles of organization or operating agreement of an LLC may prescribe the number and qualifications of managers who may, but need not, be natural persons.

Section 60 of the Revenue and Taxation Code defines a 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.” And section 64, subdivision (c)(1) of the Revenue and Taxation Code provides that:

When a corporation, partnership, limited liability company, other legal entity, or any other person obtains control through direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity through the purchase or transfer of corporate stock, partnership or limited liability company interest, or ownership interests in other legal entities, including any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, the purchase or transfer of that stock or other interest shall be a change of ownership of the real property owned by the corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained.

ANALYSIS

According to the facts as presented to us, there are collectively 12 LLCs that desire to become manager managed rather than remain member managed.

As stated above, the California Corporations Code allows LLCs to provide in their articles of organization that the business and affairs of LLCs may be managed by a manager, and that the manager is not required to be a member of the LLC (Corp. Code, § 17151, subd. (a).) Additionally, the code provides that the manager need not be a natural person. (Corp. Code, § 17151, subd. (c).) Thus, the appointment of a non-member California corporation to manage the business and affairs of the LLC is permissible under the California Corporations Code.

Section 60 of the Revenue and Taxation Code provides that a change of ownership occurs when, among other things, there is a transfer of a present interest in real property. As relevant here, section 64 specifies that there is a change in ownership of the real property owned by a legal entity when another legal entity or another person obtains direct or indirect control of the legal entity. (Rev. and Tax. Code, § 64 subd. (c)(1).) In the present case, the California corporation assuming the role of manager will have no ownership interest in any of the 12 LLCs it is charged with managing. Therefore, there will be no change in ownership as a result of the proposed change in management.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set for therein, and are not binding on any person or public entity.

Sincerely,

/s/ Susan Galbraith

Susan Galbraith
Tax Counsel

SG:yg

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cc: Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
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