



STATE BOARD OF EQUALIZATION

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Executive Director

October 28, 1981

Dear :

This is in response to your letter of August 6, 1981, to Mr. George Deukmejian, regarding the Attorney General's interpretation of Proposition 13 as it applies to a proposed transfer of real property from a husband and wife to a limited partnership. Since that office does not issue opinions to members of the general public, your letter was forwarded to us for our response. Although you have not included any specific partnership agreement, your letter states generally that you propose the following:

1. Husband and wife propose to transfer property (assuming a single parcel) to a limited partnership.
2. Husband and wife (the general and preferred limited partners) propose to contribute the property at a value frozen as of the date of the transfer. Further, husband and wife propose to contribute on behalf of their children (the common limited partners) the value increase of the property after the date of the transfer.

If, in fact, as a result of the above actions a limited partnership has been created under the Uniform Limited Partnership Act (Corporations Code, Sections 15501, et seq.), then for purposes of Proposition 13, the Legislature generally has treated such partnerships as legal entities, separate and apart from the individual partners. In this regard, prior to January 1, 1981, the law provided that the transfer of any interest to a partnership constituted a change in ownership of such property (Revenue and Taxation Code, Section 61(i)). However, operative January 1, 1981, and effective beginning with the 1981-82 assessment year, the Legislature amended Section 62(a) of the Code to exclude from the definition of change in ownership any transfer of title between an individual and a legal

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entity, "such as a co-tenancy to a partnership,...which results solely in a change in the method of holding title and in which the proportional interests by the transferors and transferees, whether represented by stock, partnership interest, or otherwise, remain the same after the transfer". (Emphasis added.)

In your proposed transaction, a husband and wife holding fee title to property transfers such property to a limited partnership, with the children to be common limited partners. We are of the opinion that such a transfer by a husband and wife of real property to a partnership is not excluded under the provision of Section 62(a) of the Revenue and Taxation Code, since each partner has a partnership interest in the partnership which now holds the title to the property. We believe that the fact that the common limited partners (children) are only to receive a specified percentage of the increased value, if any, of the property from the date of transfer upon liquidation to be immaterial. We would reach the same conclusion if the limited partners were only entitled to receive the income from the partnership property. In either case, such partners would receive nothing if the partnership were terminated immediately following formation and the original owners received the property back. Rather, resolution of the issue turns on the fact that prior to the proposed transfer there are two owners of the property and afterwards there is ownership of such property by a partnership in which more than two persons who transferred the property have partnership interests.

In conclusion, it is our opinion that the proposed transaction is not excluded under Section 62(a) and, therefore, is included as a change in ownership pursuant to Section 61(i).

Very truly yours,

Margaret S. Shedd
Tax Counsel

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