

220.0388 **Limited Partnership.** If an individual transfers real property to a limited partnership in which the individual is the general partner and in which an irrevocable trust is the limited partner, the transfer will be excluded from change in ownership if the individual is also the income beneficiary of the trust. In the case of a similar transfer to a limited partnership by spouses who hold title as joint tenants or tenants in common, such a transfer will be excluded if the spouses become general partners and receive capital and profits interests in the same proportions as they held in the real property and if the spouses are also the sole income beneficiaries of the limited partner trust in the same proportion as the interests each held in the real property. If, however, the trustee in either case has the discretion or obligation to pay income to persons other than or in addition to the individual or spouses or to pay income to the spouses in proportions different than the interests each held in the real property, Revenue and Taxation Code section 62(a)(2) is inapplicable, notwithstanding the fact that the trust terminates in less than 12 years and the property reverts to the trustor/individual or trustors/spouses. Section 62(a)(2) requires exactitude, and coming close to identical proportionality is not sufficient.

If the spouses hold title to the real property as community property, then the transfer is excluded if either spouse becomes a general partner, as long as the partnership interest is held as community property. In such case, they would still be required to be the sole income beneficiaries of the trust. Conversely, if one spouse holds title to the real property as his or her separate property, then the transfer would be excluded only if that spouse and the trust are the only partners and if that spouse is the sole income beneficiary of the trust. C 3/31/92. (M99-1)



STATE BOARD OF EQUALIZATION

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March 31, 1992

Dear Mr. _____:

This is in response to your letter of February 14, 1992 to the State Board of Equalization in which you request the following two "rulings":

1. The transfer by an individual or by a husband and wife of real property to a limited partnership wherein the individual, or one of the spouses or both spouses, are general partners and wherein the limited partner is an irrevocable trust created by the individual or by husband and wife and under which the individual or husband and wife are the primary beneficiary or beneficiaries, and which trust terminates after 11 years and 11 months, will not constitute a "change in ownership".

2. The transfer by a spouse of that spouse's real property to a limited partnership wherein husband and wife or either of them is a general partner and the limited partner is an irrevocable trust created by husband and wife, or either of them, under which husband and wife are the primary beneficiaries, and which trust terminates after 11 years and 11 months, will not constitute a "change in ownership".

Section 60 of the Revenue and Taxation Code^{1/} defines "change in ownership" to mean:

^{1/}All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

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(i), except as otherwise provided in section 62, includes as a change in ownership:

The 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), however, excludes from change in ownership:

Any transfer between an individual or individuals and a legal entity...such as a cotenancy to a partnership...which results solely in a change in the method of holding title to the real property and in which proportional ownership interests...represented by...partnership interest...in each and every piece of real property transferred, remain the same after the transfer....

See also Property Tax Rules 462(b)(2)(A)(iii), 462(j)(2)(B) and 462(m)(5).

For purposes of section 62(a)(2) and the foregoing Property Tax Rules, we have taken the position that the sole income beneficiary of an irrevocable trust is the sole owner of the property held in trust. We have not taken the position, however, that for purposes of section 62(a)(2) the trustor is the sole owner of the trust property with respect to trusts in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration as explained below.

Thus, with respect to your first request, if an individual transfers real property to a limited partnership wherein the individual is the general partner and wherein the limited partner is an irrevocable trust created by the individual and which trust terminates after 11 years and 11 months, such transfer of real property would be excluded from change in ownership under section 62(a)(2) if the individual is the sole income beneficiary of the trust. In such case, the transfer results solely in a change in the method of holding title to the real property and the individual's proportional ownership interest in the real property as represented by his partnership interest remains the same, i.e., 100%.

Similarly, if a husband and wife transfer real property

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to a limited partnership wherein the spouses are the general partners each having the same interest in capital and profits as they each held in the real property and wherein the trust is the limited partner, the transfer will be excluded from change in ownership under section 62(a)(2) if the spouses are the sole income beneficiaries of the trust in the same proportion as the interests they held in the real property. If, however, the trustee in either of the above scenarios has the discretion or obligation to pay income to persons in addition to the individual or the spouses or to pay income to the spouses in proportions differing from the interests they held in the real property, section 62(a)(2) would not apply, in our opinion, notwithstanding the fact that the trust terminates in less than 12 years and reverts to the trustor or trustors. Section 62(a)(2) requires exactitude. Coming close to identical proportionality isn't sufficient. Compare e.g., Property Tax Rule 462(j)(2)(B) examples (i) and (ii).

Note that if the spouses owned the real property other than as community property, i.e., as tenants in common or as joint tenants, both would have to be partners having the same interest in capital and profits as they held in the real property to satisfy section 62(a)(2). If, however, they held the real property as community property, then either could be a general partner as long as the partnership interest was held by them as community property in which case their interests in partnership capital and profits attributable to that interest would be equal (*Kenworthy v. Hadden* (1978), 87 Cal.App.3d 696.) They would, of course, still have to be equal sole income beneficiaries of the trust.

With respect to your second request in which one spouse transfers that spouse's separate real property to a partnership, section 62(a)(2) would be satisfied only if that spouse and the trust are the only partners and if that spouse is the sole income beneficiary of the trust. If not, section 62(a)(2) would not apply and there would be a change in ownership of the real property transferred to the partnerships under section 61(i).

The views expressed in this letter represent the opinion of the Board's legal staff. They are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusions stated above.

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

Sincerely,



Eric F. Eisenlauer
Senior Staff Counsel

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cc: Mr. John Hagerty
Mr. Verne Walton