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450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (714) 558-6760
FAX (916) 323-3387
www.boe.ca.gov

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September 30, 2005

Honorable Cris Andrews
Shasta County Assessor-Recorder
Attn:
1500 Court Street, Suite 115
Redding, CA 96001-1694

Re: *Change in Ownership Following Merger of Two Limited Partnerships*

Dear Mr. Andrews:

This is in response to your letter dated October 4, 2004. In that letter, you inquired whether a merger of two separate limited partnerships would result in a change in ownership of the real property owned by those partnerships. For the reasons hereinafter explained, it is our opinion that the merger would result in changes in ownership for all real property owned by both partnerships.

Background and Facts

As described in your letter and accompanying documentation, the following facts are relevant to this analysis:

1. (OH III), a California limited partnership, owns an apartment complex located in Shasta County.
2. (OH IV), another California limited partnership, owns a separate apartment complex, also located in Shasta County.
3. W owns 5 percent of the capital and profits in each partnership and acts as the general partner for both.
4. Limited partners own the remaining 95 percent of capital and profits in each partnership.
5. Except for the following three individuals, the limited partners' proportional ownership interests in both partnerships are identical: (CSG) owns a 9.5 percent interest in OH III and no interest in OH IV; (2) (JRD) owns a 4.75 percent interest in OH IV and no interest in OH III; and, (3) (JS) owns a 4.75 percent interest in OH IV and no interest in OH III.
6. The two limited partnerships are proposed to be merged, with each partner maintaining their respective ownership interests before and after the transfer, except for the three individuals listed above.

7. With regard to CSG, that individual will retain a smaller indirect ownership interest in the apartment complex formerly owned by OH III and concurrently obtain an interest in the real property formerly owned by OH IV—an interest that he did not hold prior to the merger. Likewise, JRD and JS will each retain a smaller indirect ownership interest in the apartment complex formerly owned by OH IV and concurrently obtain an interest in the real property formerly owned by OH III. These shifts decrease and increase these limited partners' indirect ownership interests in the two apartment complexes.

Law and Analysis

Would the merger of OH III and OH IV result in a change in ownership of the real property owned by both limited partnerships?

Yes. Since the ownership interests in the capital and profits of both partnerships are not identical, merger of the two partnerships would result in a change in ownership of the real property owned by both partnerships.

Revenue and Taxation Code¹ section 60 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." When any legal entity, such as a partnership, transfers real property to any other person, that transfer is considered to be a change in ownership and results in reappraisal of the property transferred (subdivision (j) of section 61). Unless the transaction qualifies for an exclusion, this result is automatic whether the property is transferred by purchase, gift, devise, or any other means of conveying present beneficial ownership (Property Tax Rule 462.001).²

Among other exclusions, subdivision (a)(2) of section 62 provides an exclusion from the definition of a change in ownership for proportional interest transfers between legal entities. To qualify for the exclusion, such transfers must result solely in a change in the method of holding title to the real property, and the proportional interests of the transferors and transferees must remain exactly the same before and after the transfer in each and every piece of real property transferred. In order for a transfer of real property from one partnership to another to be proportional, each partner's percentage ownership interest in the transferee partnership after the transfer must be identical to the percentage ownership interest it held in the transferor partnership's capital and profits before the transfer (subdivision (b)(2) of Rule 462.180).

To determine whether the merger of these limited partnerships will satisfy the proportionality requirements of subdivision (a)(2) of section 62, we recommend that your office review the percentage of the ownership interests of all partnership capital and profits before and after the transfer. Unless the interests held before and after the transfer are completely identical, a change in ownership has occurred.

From the facts presented above, is our opinion that the ownership interests in the affected properties will not remain proportional before and after the merger. Before the merger, CSG has 9.5 percent indirect ownership of the real property owned by OH III and 0 percent indirect

¹ All statutory references are to the Revenue and Taxation Code unless otherwise specified.

² All references to "Property Tax Rule" or "Rule" are to Title 18 of the California Code of Regulations.

ownership of the real property owned by OH IV. Likewise, prior to the merger JRD and JS each have 4.75 percent indirect ownership of the real property owned by OH IV and 0 percent indirect ownership of the real property owned by OH III. After the proposed merger, each of these limited partners will experience a decrease in their indirect ownership interests in the apartment complex that they owned prior to the merger, while concurrently increasing their indirect ownership interest in the real property owned by the other limited partnership. These deviations alter the indirect ownership interests held by these limited partners and cause the merger to be disproportional.

In our opinion, a merger of these two limited partnerships, without identical ownership interests in both partnerships' capital and profits, destroys proportionality and will result in changes in ownership of the properties formerly held by both partnerships. Following the merger, the real property owned by both partnerships should receive a 100 percent reappraisal.

Furthermore, it is our opinion that changes in ownership occur even if the merger of the partnerships is considered a "statutory merger." Subdivision (d)(4) of Property Tax Rule 462.180, provides in part, that a change in ownership does not include "statutory mergers":

This provision shall not apply to a statutory conversion or a statutory merger of a partnership into a limited liability company or other partnership (or a limited liability company into a partnership) when the law of the jurisdiction of the converted or surviving entity provides that such entity remains the same entity or succeeds to the assets of the converting or disappearing entity without other act or transfer and the partners or members of the converting or disappearing entity maintain the same ownership interest in profits and capital of the converted or surviving entity that they held in the converting or disappearing entity. [Emphasis added.]

As a result of the last sentence in subdivision (d)(4) of Rule 462.180, statutory mergers are excluded from change in ownership provided that the partners of the disappearing partnership maintain the same ownership interests in the capital and profits of the surviving partnership that they held in disappearing entity. Thus, if a statutory merger of two limited partnerships is not proportional, the transfers of property result in changes in ownership because the partners' ownership interests were not completely proportional before and after the merger.

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 forth herein, and are not binding on any person or public entity.

Sincerely,



Michael Lebeau
Senior Tax Counsel

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cc: Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70