STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-4588

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February 25, 1994

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_____

Dear Mr._____:

This is in response to your letter of February 24, 1994, requesting our view on whether Revenue and Taxation Code Section 64, subdivision (a), applies to a partnership where the partnership's function is to own and operate real property.

For purposes of brevity, I will not repeat all of the facts stated in your letter. In summary, _____ is a family-owned partnership which owns and operates real property. Two of the partners, Ernest and Angeline _____ (husband and wife) held a 1/6 partnership interest as community property until August of 1987 when they acquired an additional 4/6 interest. In May of 1988 they obtained the right to purchase the remaining 1/6 interest which they conveyed to their sons Nick, Tom and John. Subsequent transfers of partnership interests were made to the sons and to Angeline as successor-trustee of the Catina _____ Trust. After these transfers the partnership interests were owned as follows:

Ernest and Angeline (as community property) - 4.95 percent

Angeline as Trustee - 21.43 percent

John (son) - 24.66 percent

Nick (son) - 24.66 percent

Tom (son) - 24.66 percent

At the time these transfers were made, the individual partners holding record title conveyed the partnership properties to the partnership. The partnership interests continue to be held in the proportions set forth above.

Based on these facts, you ask whether subdivision (a) of Revenue and Taxation Code Section 64 "exempts these transfers of partnership interests from reassessment where the partnership's purpose is to own and operate real property." More precisely, we believe your question is whether the described transfers of partnership ownership interests constitute a change in ownership of the partnership real property.

Following the adoption in 1978 of Proposition 13 (Article XIIIA of the California Constitution) the Legislature adopted Part 0.5 (commencing at section 50) of the Division 1 of the Revenue and Taxation Code, implementing the constitutional amendment. Included in Part 0.5 are the provisions of Chapter 2 (commencing at section 60) dealing with change in ownership and purchase. Among the provisions included in this chapter are section 64 dealing with the transfer of ownership interests in legal entities. Subdivision (a) of section 64 contains the basic rule that the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership interests, shall not be deemed to constitute a transfer of the real property of the entity.

This general rule is subject to three express exceptions. The first exception relates to subdivision (h) of section 61, relating to the transfer of stock of a cooperative housing corporation. Based on the stated facts this exception is not applicable.

The second exception is subdivision (c) of section 64, which provides that when any person or legal entity obtains a majority ownership interest in any partnership through the purchase or transfer of partnership interests, there is a change of ownership of the property owned by the partnership. While it appears that Ernest and Angeline Papadakis owned, at one time, at least a 5/6 interest in the partnership and might even be considered to indirectly own the remaining 1/6 interest, those interests were acquired as community property and each spouse is considered to be the owner of 50 percent of the ownership interest in question. See Letters to Assessors nos. 85/33 and 83/17 attached. Assuming that Ernest and Angeline held a 100 percent interest in the partnership as community property, each would be considered to own a 50 percent interest and thus neither would have a "majority ownership interest" which would make the provisions of subdivision (c) applicable.

The third exception is subdivision (d) of section 64, relating to property transferred to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Revenue and Taxation Code Section 62. Nothing in the stated facts indicates that this exception is applicable.

Since, based on the facts presented, it appears that none of the three exceptions are applicable, we conclude that the general rule of subdivision (a) should be applied here. That is, the described transfers of partnership interests do not constitute a transfer or change in ownership of the real property of the partnership.

The fact that the purpose of the Anchor Investments partnership was to own and operate real property does not, in any way, affect our conclusion. Subdivision (a) of section 64 applies to any partnership owning real property, regardless of the purpose for which it was created or is operated. This conclusion is based, first, on the plain language of the section and its legislative history; second, on the language of the administrative regulation which interprets this statutory language; and, third, on the consistent administrative interpretation of subdivision (a) by the staff of the State Board of Equalization.

Subdivision (a) states a general rule applicable to transfers of ownership interests in legal entities "such as corporate stock or partnership interest". These terms are unqualified except for the specific three exceptions discussed above. The language is plain and definite and is not subject to interpretation by adding a further exception that is not stated. See Delaney v. Superior Court (1990) 50 Cal.3rd 785, 798, 799, 800.

We find nothing in the legislative history of subdivision (a) which suggests that the Legislature intended an exception for partnerships operated for the purpose of owning and operating real property. See the discussion of the provisions of subdivision (a), relating to legal entities, found on pages 27 to 29 of the report of the Assembly Revenue and Taxation Committee, dated October 29, 1979, and titled "Implementation of Proposition 13 - Volume I - Property Tax Assessment," copy attached.

The administrative regulations adopted pursuant to the Boards statutory authority (Government Code section 15606) provide no exception to the general rule stated in subdivision (a) for partnerships operated for certain purposes. See Property

Tax Rule 462, subdivision (j) (3) which states, in part, "the purchase or transfer of corporate stock, partnership shares, or ownership interests in other legal entities is not a change in ownership of the real property of the legal entity." (See 18 California Code of Regulations, Section 462.) While the regulation goes on to recognize the various exceptions reflected in the statute, nothing in the regulation suggests that there is an exception to this general rule based on the purpose of the partnership or corporation.

Since the enactment of the statutory and regulatory provisions, the staff of the State Board of Equalization has provided advice to taxpayers, county assessors, legislators, etc. on the proper interpretation and application of the property tax laws in this area. The staff has consistently taken the view that, with the exceptions expressly stated in the subdivision, the general rule stated in subdivision (a) of section 64 is otherwise unqualified. The Board staff has never understood that there was any qualification relating to the purposes for which a particular corporation or partnership was operated. Such an exception is contrary to the understanding we have had since the adoption of the statutory provisions in 1979. Thus, we have a history of 15 years of consistent administrative interpretation. The contemporaneous administrative construction of a statute by those charged with its enforcement and interpretation, while not necessarily controlling, is entitled to great weight, and the courts will not depart from such construction unless it is clearly erroneous or authorized. See Carlson v. Assessment Appeals Bd. (1985) 167 Cal.App.3rd 1004, 1012.

I understand that the issues discussed above relate to litigation currently pending in superior court. The views expressed above are intended to relate solely to the question of whether the provisions of subdivision (a) of section 64 apply to _____ even though the partnership's purpose is to own and operate real property. This letter is not intended to express any opinion regarding any other issue in this litigation. The views expressed in this letter are, of course, advisory only.

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,

Richard H. Ochsner
Assistant Chief Counsel

RHO:jd
precednt/prtnrshp/94005.rho

Attachments

cc: Ms. _____
Office of the _____ County Counsel
Ms. Jennifer Willis, MIC:70
Mr. John Hagerty, MIC:62
Mr. Verne Walton, MIC:64