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This is in response to your request for our opinion on whether the following transaction would result in a change of control of a partnership. The transaction as set forth in your letter is as follows:

The subject real property is a shopping center ("center"). The land and buildings comprising the center are owned by a partnership ("Center Partnership" or "CP"). Prior to September, 1985, the ownership interests in CP were owned by two partnerships, Operating Partnership One ("OP-1") owning 70% of both capital and profits, and an Investor Partnership owning 30%. The ownership interests in OP-1 were owned (capital and profits) by an individual ("Owner") 67.5%, Owner's Real Property Company (a wholly-owned corporation) 9%, and by several other individuals owning minor percentage interests. Pursuant to the partnership agreements of both CP and OP-1, Owner had actual authority to control the operations and management of the center.

In September, 1985, the above organizations were restructured as follows: (1) a new Operating Limited Partnership was formed ("OP-2") in which Owner acquired a 7.8% interest in capital and profits, a revocable trust in which Owner is trustee and holds the power of revocation owns 60%, Owner's Real Property Co. owns 0.592%, and various other individuals own minor

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percentages; (2) all of the partners in OP-1 transferred their interests in OP-1 to OP-2 in return for the above-described interests in OP-2; (3) OP-2 caused OP-1 to liquidate and assign its 70% interest in CP to OP-2. Owner retained actual authority to control the management and operations of the center.

Prior to the transactions, Owner through his interest in OP-1, held a 47.25% interest (.675 x .70) in the Center Partnership. If his interest in the Real Estate Co. is included, his interest was 53.55% (.765 x .70). After the transaction, Owner and his revocable trust and Real Estate Co. held 47.97% (.6839 x .70) of CP. Both before and after the transaction, Owner owned a majority capital and income interest in the partnership which owned a majority capital and income interest in the partnership directly owning the center.

You state in your letter that there are several properties involved, that the partnership interests differ slightly, and, therefore, the transaction outlined above is "representative" of all the properties involved. The properties have not been identified and we have reviewed none of the transaction documents in this case. Therefore, because the described transaction is representative, our analysis should be treated only as a response to a posed hypothetical factual situation.

Analysis:

Revenue and Taxation Code, Section 64(c), provides in pertinent part that:

(c) When a corporation, partnership, other legal entity or any other person obtains control, as defined in Section 25105, in any corporation, or obtains a majority ownership interest in any partnership or other legal entity through the purchase or transfer of corporate stock, partnership interest, or ownership interests in other legal entities, such purchase or transfer of such stock or other interest shall be a change of ownership of property owned by the corporation, partnership, or other legal entity in which the controlling interest is obtained.

In the transaction which you describe, OP-2 obtained a 70 percent interest in CP. Rule 462 (j)(4)(A) provides that:

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When any corporation, partnership, other legal entity or any person:

...

(ii) obtains direct or indirect ownership or more than 50 percent of the total interest in both partnership capital and profits,

...

all of the property owned directly or indirectly by the acquired legal entity is deemed to have undergone a change in ownership.

Therefore, when OP-2 obtained more than a 50 percent interest in CP, there was a change in control of CP from OP-1 to OP-2 under Section 64(c). You contend that Owner, through his own holdings, his revocable trust, and his real estate corporation, owned a majority capital and income interest in the partnership (OP-2) which owned a majority capital and income interest in the partnership which owns the shopping center (CP). Therefore, you argue that there has been no real change in control because Owner still has "control" of CP.

Section 64(c) provides that when an unrelated a corporation takes control of another unrelated corporation, the real property owned by a subsidiary of the latter corporation changes ownership because the indirect owner of the property has changed. However, Section 64(c) does not disregard the corporate entity of the new owner to ascertain the identity of the shareholders of the acquiring corporation. To do so would be contrary to the express statutory language enacted by the Legislature. Section 64(c) provides that there is a change in ownership when a "corporation", a "partnership", any other "legal entity", or a "person" gains direct or indirect control. In the present case, OP-2, a partnership, gained control of CP. Thus, the express conditions of Section 64(c) are satisfied by the facts presented and we must conclude that there was a change in ownership of the CP's property.

The Legislature has provided a means of avoiding this result in Section 62(a)(2), however. That statute provides that where there is only a change in the method of holding title and the "proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise...remain the same after the transfer," there is not a change of ownership. Thus, if the change in control of CP merely constituted a change in the method of holding title without a change in the proportional ownership interests, the transfer would be excluded from change in ownership.

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In the situation which you describe, OP-1, the partnership which formerly controlled CP, was owned 67.5 percent by Owner, 9 percent by Owner's corporation, and 23.5 percent by other individuals. OP-2, the new controlling partnership, is owned 7.8 percent by the Owner, 60 percent by Owner's revocable trust, .592 percent by Owner's corporation, and 31.608 percent by other individuals. The minority interest alone in OP-2 is 7.5 percent greater than it was in OP-1, therefore, the proportional ownership interests in OP-2 are not the same as they were in OP-1. Because OP-2 is composed of different ownership interests, Section 62(a)(2) is not applicable. OP-2 must be treated as a different entity from OP-1 in substance as well as form. Therefore, under the current statutes, there has been a change in control of CP which results in a change in ownership of its property.

The views expressed herein are, of course, only advisory in nature. We would also add the comment that the interpretation urged in your letter seems reflective of an attribution concept which the Legislature has not yet chosen to adopt. While several bills which would have added attribution rules to the change in ownership provisions have been introduced over the years, they have all failed passage.

Very truly yours,

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