220.0305

(916) 445-4588

February 15, 1983

Dear Mr. :

This is in response to your letter of February 8, 1983, asking for our opinion on whether a reorganization of various partnerships would constitute a change in ownership for property tax purposes. You asked two separate questions.

First, you asked whether merging a number of existing partnerships into one existing partnership would constitute a change in ownership. As I understand the facts, title to certain real property located in California is held by Partnership I. After the merger, title will continue to be held by Partnership I. The merger that you describe would not cause any corporation, partnership, legal entity, or other person to obtain direct or indirect ownership of more than 50 percent of the total interests in Partnership I's capital and profits, and, therefore, Section 62(c) and Board Rule 462(j)(4)(A) are inapplicable. Moreover, subdivision (d) of Section 64 is inapplicable because the property was not previously excluded from a change in ownership by subdivision (a) of Section 62.

Assuming the facts are stated in your letter, it is my opinion that there is not a change in ownership of the real property owned by Partnership I. Your description of the facts does not permit me to express an opinion on whether there has been a change in ownership of the other limited partnerships; however, you stated that those partnerships do not own any real property in California.

Your second question relates to offering interests in Partnership I to the public. Assuming no partner acquires more than a 50 percent interest in the partnership capital and profits, the transfer of partnership interests to additional

partners would not result in a change in ownership, provided title to the property continues to be held in Partnership I and provided the facts are as you stated in your letter.

Very truly yours,

Lawrence A. Augusta
Assistant Chief Counsel

LAA:jlh

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220.0305

(916) 323-7715

April 20, 1984

Dear :

This is in furtherance of our recent telephone conversation concerning Mr. Lawrence Augusta's February 15, 1983 letter to Mr. B pertaining to whether the merging of several existing partnerships into one existing partnership would constitute a change in ownership. Per the letter, in part:

> "...title to certain real property located in California is held by Partnership I. After the merger, title will continue to be held by Partnership I. The merger that you describe would not cause any corporation, partnership, legal entity, or other person to obtain direct or indirect ownership of more than 50 percent of the total interests in Partnership I's capital and profits, and, therefore, Section 62(c) and Board Rule 462(j)(4)(A) are inapplicable. Moreover, subdivision (d) of Section 64 is inapplicable because the property was not previously excluded from a change in ownership by subdivision (a) of Section 62.
>
> "Assuming the facts are stated in your letter, it is my opinion that there is not a change in ownership of the real property owned by Partnership I...."

Although not specifically stated, the opinion that there is no change in ownership of the partnership property is premised upon the assumption that Partnership I is a continuing partnership, that is, upon the addition of the partners, the partnership did not terminate but rather, it continued.

Per Cal. Jur. III, Partnership, Section 93, Formation of

new firm, on admission of a new member into a partnership the first partnership is, in legal theory, dissolved, and a new partnership composed of the old members and the new member comes into being except where otherwise provided by written agreement. Per section 72 thereof, Withdrawal or admission of partner, the admission of a new partner results in the dissolution of a partnership, unless otherwise provided by a written agreement signed by all the partners, including the newly admitted partner, before admission. A newly admitted partner may become a party to any pre-existing agreement by signing it upon admission. And no UPA provision prevents or impairs the effect or enforceability of a written agreement that a partnership will not be dissolved by the admission of a new partner. Copies of Sections 93 and 72 are enclosed for your review.

The continuing partnership concept follows from Corporations Code Section 15031:

> "Dissolution is caused:
>
> * * *
>
> "(7) By...admission of a new partner unless otherwise provided in an agreement in writing signed by all of the partners, including...any such newly admitted partner, before such...admission; provided that in the case of a newly admitted partner he may become a party to any such pre-existing agreement by signing the same upon such admission.
>
> "None of the provisions of any other section of this chapter shall prevent, or impair the effect or enforceability of, any agreement in writing that a partnership will not be dissolved as provided for in subdivision...(7) of this section."

A copy of this Section 15031 is also enclosed for your review.

Accordingly, review of Partnership I's Agreement or Articles of Partnership would disclose whether the Partnership continued upon the addition of new partners or whether it dissolved and a new partnership came into being. In the case of the former, the opinion in the February 15, 1983 letter would remain unchanged. In the case of the latter, there would be a change in ownership because Partnership I did not remain in existence after the addition of the new partners. In this regard, see the December 9, 1981 letter from Glenn Rigby to Mr. and the May 7, 1982, letter from Glenn Rigby, copies

enclosed.

If Partnership I was a continuing partnership, the change in the name of the partnership did not constitute a change in ownership of the partnership property. In this regard, see the May 7, 1982 letter from Glenn Rigby.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

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Enclosures