

February 4, 1982

As requested in your note of January 28, 1982, we have reviewed the material you attached concerning the distribution of the assets of the partnership called H

We understand the partnership was formed in 1975 and Mr. W and Mr. H were equal partners. On November 4, 1980, the dissolution agreement was entered into whereby one of the parcels of real property of the partnership was transferred, in fee to Mr. H and the other parcel of property located in Riverside County was transferred in fee to Mr. W. It is the parcel in Riverside that is the subject of dispute.

Mr. F, Mr. W attorney, contends that only 50% of the property should be subject to reappraisal as a change in ownership. His contention is that Mr. W always owned 50% of the property of the partnership, since he was one of the two equal partners.

For the following reasons, I must respectfully disagree with Mr. F.

The Legislature adopted the entity theory in dealing with partnership property for change in ownership purposes. As indicated in Section 61(i) of the Revenue and Taxation Code, transfers from such legal entities are to be regarded as changes in ownership. In essence, they have concluded the entity is the owner of the property and not the individual partners. The only exception to this is contained in Section 62(a) of the Revenue and Taxation Code.

However, in our opinion, in order to come within the exclusion of Section 62(a), the "proportional interests" in the property must be identical both before and after the subject transfer. Under the aggregate theory of Section 62(a), the two

February 4, 1982

partners were regarded as the owners of the property rather than the partnership. They were for all intents and purposes, treated as co-tenants of the property for the purposes of Section 62(a). The percentage ownership they each held in the total property of the partnership equated to their partnership interest. When the partnership dissolved, it was necessary for them to retain the same proportional interest in the subject property. In the case described above, the proportional ownership interests in the property changed; i.e., prior to the transfer H and W were co-owners of all the property; afterwards, they were not. Even though the property was distributed based on the dollar value of H and W interest in the partnership, the fact remains that their proportional ownership interests in the various properties changed.

Summarily, it is our opinion that under Section 62(a) unless the proportional ownership interests in the property are identical both before and after the transfers, we will consider a change in ownership to have occurred and subject to reappraisal under Section 61(i) of the Revenue and Taxation Code.

Mr. F argument contained in the last paragraph on page 1 of his January 22, 1982, letter is not well taken. Such procedure would be looked upon as a step transaction under the Kimbell Diamond rule, 187 F. 2d 718 (14 T.C. 54) (1951). In such a case, we would consider the transfer as occurring between the partnership directly to the partners. This would be a cause for reappraisal of the total property under Section 61(i) of the Revenue and Taxation Code.

Very truly yours,

Glenn L. Rigby  
Assistant Chief Counsel

GLR:jlh