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December 7, 1988

Dear

This is in response to your October 14, 1988, letter concerning transfers of real property to Redacted, a family general partnership, on December 31, 1986, and January 28, 1988, and whether the transfers constituted changes in ownership for property tax reassessment purposes.

From the letter and my telephone conversation with Mr. Redacted we understand that in 1986 Redacted was a family partnership which owned assets/personal property but no real property. Mr. Redacted and Mrs. Redacted each had a 40 percent interest in the partnership, and Redacted, their son, had a 20 interest therein. On December 31, 1986, Mr. and Mrs. Redacted transferred several parcels of real property owned by them to Redacted, and Mr. Redacted transferred several parcels of real property owned by him to Redacted. Per Mr. Redacted May 8, 1987, letter to you:

“Following the transfer of property, adjustments were made to the respective capital accounts commensurate with the net value of the property transferred. The value was determined on the basis of recent appraisals . . . Using this method, I calculate the capital accounts to be 76% : 24%.”

According to your letter, subsequent to the 1986 transfers, Mr. Redacted interest in Redacted was 34 percent and Mrs. Redacted and Mr. Redacted interests therein were each 33 percent.

Section 60 of the Revenue and Taxation Code (all section references contained herein are to the Revenue and Taxation Code) states that:

A “change in ownership” means 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.

Section 61 (i) states that the definition of a change in ownership includes:

The transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person.

As section 61 (i) indicates, a transfer of real property from an individual to a partnership is a change in ownership. In enacting section 61 (i), the Legislature embraced the “separate entity

theory”, whereunder the general laws of the State endowing partnerships and other legal entities with an identity separate from their respective owners are respected. Thus, upon the transfer of

real property from individuals to a partnership in which the individuals are partners, the partnership is considered the owner of the real property, not the individual partners. Accordingly, unless section 62 (a) (2), hereinafter discussed, is applicable, Mr. and Mrs. Redacted 1986 transfers of real property owned by him individually to Redacted constituted changes in ownership for property tax reassessment purposes.

As you are aware, section 62 (a) (2) states, in pertinent part, that a change in ownership shall not include:

Any transfers between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, which results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer.

As section 62 (a)(2) indicates, a transfer of real property from an individual or individuals to a partnership can be excluded from section 61 (i)/change in ownership if the proportional ownership interests of the individual(s) and partnership in each and every piece of real property transferred remain the same after the transfer(s). In this case of the 1986 transfers of real property to Redacted, Mr. and Mrs. Redacted each owned 50 percent of their properties prior to the transfers and 40 percent (or 38%, or 34% and 33%) thereof through the partnership after the transfers; and Mr. Redacted owned 100 percent of his properties prior to the transfers and 20 percent (or 24% or 33%) thereof through the partnership after the transfers. Thus, since the proportional ownership interest of Mr. and Mrs. Redacted and Mr. Redacted in the real property transferred did not remain the same after the transfers, section 62 (a)(2) is not applicable thereto.

In his May 8, 1987, letter, Mr. Redacted contends that section 62 (a)(2) is applicable because the proportionate adjustments to the capital accounts and the requirement that the accounts be brought to a zero balance before remaining assets are distributed insures that the transfers resulted solely in a change in the method of holding title to the real property. As indicated, however, proportionality in ownership interests is required and upon the transfers of the real property to the partnership, the Redacted proportional interests therein changed; and bringing the capital accounts to a zero balance before distributing any remaining assets is not a relevant consideration for change in ownership purposes.

The same analysis would be applicable to subsequent transfers, and the January 28, 1988, transfers would constitute changes in ownership (section 61(i)) or not (section 62 (a)(2)) depending upon whether the proportional ownership interests of the Redacted and the partnership in each and every piece of real property transferred remained the same after the transfer(s).

Hon. E. Dan O'Connell

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December 7, 1988

Very Truly Yours,

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Tax Counsel

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