

220.0504 **Partnership.** The execution and recording of a Statement of Partnership constitute acts sufficient to create a partnership. A subsequent transfer of property owned by some of the partners to the partnership creates ownership interests in all the partners and is, therefore, a change in ownership.

If the partners agree to amend the partnership agreement so that only the contributors of property to the partnership remain partners and the others drop out, then the old factored base year value could be reinstated. This would not result in a refund of taxes, however since tax liability is determined by the facts as they exist on the March 1 lien date for the regular roll, or on the date of the change in ownership for the supplemental roll. C 4/29/86.

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April 29, 1986

Mr. [redacted] [redacted]
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Reappraisal of Lawson Properties, Marin County

Dear M

This letter is in reply to your letter to Mr. James J. Delaney dated April 2, 1986, in which you request our opinion with respect to the following facts set forth in your letter.

Various parcels of property in Marin County were held in title by Merle Eugene Lawson and Icymae Lawson, his wife, as community property as to an undivided one-half interest, and Walter S. Lawson and Dolores E. Lawson, his wife, as community property as to an undivided one-half interest.

Merle Eugene Lawson and Icymae Lawson, and Walter S. Lawson and Dolores E. Lawson granted the subject properties to Lawson Brothers, a partnership by deed recorded January 3, 1985.

A "Statement of Partnership" was recorded on January 22, 1985, which names the partners as Merle E. Lawson, Icymae Lawson, Walter S. Lawson, Dolores Lawson, Carl William Vogler, and Nancy L. Vogler.

The Marin County Assessor made a 100% reappraisal of the property as of January 3, 1985, resulting from the above-mentioned transfer, pursuant to Property Tax Rule 462(j).

The Lawsons filed an appeal in which they contend that the Voglers were included in the partnership in error, and that the intent of the partnership was not to change the ownership interests in real property and that the transfer

of title be excluded from reappraisal pursuant to Property Tax Rule 462(j)(2)(B).

An instrument amending the partnership agreement was recorded on October 24, 1985 in which the Voglers have been removed from the partnership.

Based on the foregoing facts, you ask the following questions.

1. Are we correct in considering the January 3, 1985 transfer a change in ownership requiring full reappraisal for the 1985-86 assessment year and the resulting supplemental assessment?

Revenue and Taxation Code, Section 62 provides in pertinent part that change in ownership shall not include:

(a)(2) any transfer between...individuals and a legal entity...which results solely in a change in the method of holding title to the real property and in which the 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.

Rule 462(j)(2)(B) states that excluded from a change in ownership are:

Transfers of real property between separate legal entities or by an individual(s) to a legal entity (or vice versa), which result solely in a change in the method of holding title and in which the proportional ownership interests in the property remain the same after transfer.

The taxpayers argue that the foregoing provisions are applicable because no gifts of partnership interests to the Voglers were made prior to the time the partnership agreement was amended to exclude the Voglers as partners. In effect, taxpayers argue that the Voglers did not receive any interest in the Lawson Brothers partnership when the partnership agreement was executed by the Lawsons and the Voglers or at any time thereafter so that the proportional

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ownership interests of the Lawsons in the real property transferred to the partnership remains the same after the transfer as it was before the transfer.

Since "[a] partner is co-owner with his partners of specific partnership property holding as a tenant in partnership (Corp. C. 15025(1)), the issue here is whether the Voglers became partners in a partnership with the Lawsons.

The applicable rules were stated by the court in Constans v. Ross (1951) 106 Cal.App.2d 381, 386, as follows:

"The question of the existence of a partnership depends primarily upon the intention of the parties ascertained from the terms of the agreement and from the surrounding circumstances. (Citations omitted)...In ascertaining the intention of the parties where they have entered into a written agreement, such intention should be determined chiefly from the terms of the writing (citation omitted)....It is the intention as evidenced by the terms of the agreement, and not the subjective or undisclosed intention of the parties that controls."

Although you have not provided us with a copy of the partnership agreement including the Voglers, the Statement of Partnership executed January 7, 1985 and recorded January 22, 1985, leaves no doubt as to the intention of the parties. That document stated the name of the partnership and stated that Carl William Vogler and Nancy L. Vogler as well as the Lawsons were partners. Each of the six parties signed the document and Merle and Walter Lawson declared under penalty of perjury that the statements were true and correct.

The taxpayers' attorney, Mr. Joseph A. Forest, contends in his letter to the Assessment Appeals Board dated September 9, 1985, that the taxpayers did not intend the proportional ownership interests to change or to trigger a reassessment as a result of a change in ownership. Such intention is directly contrary to the intention expressed in their partnership agreement and the Statement of Partnership. Under the rules set forth above, it is the intention evidenced by the agreement which controls and not the subjective or undisclosed intention of the parties.

The amended partnership agreement of the Lawsons which was recorded October 24, 1985, recites "Said partnership agreement of January 1, 1985 erroneously recited that Carl William Vogler and Nancy L. Vogler received their partnership interest from gifts made by Merle E. Lawson and Icymae Lawson in December, 1984. In fact, these gifts have not yet been made."

This statement seems to assume that Merle and Icymae Lawson had to perform some additional act in order to create partnership interests in the Voglers. As indicated above, whether the Voglers were partners was a question of intent to be determined primarily from the written agreement of the parties. Moreover, for federal gift tax purposes, the tax court has recognized that the mere signing of a partnership agreement, followed by acts in conformity therewith was sufficient to constitute a taxable gift of a partnership interest (William H. Gross (1946) 7. T.C. 837, Walter H. Lippert (1948) 11. T.C. 783). In the latter case, the court rejected the taxpayers' contention that no gift was made because he signed no deed and executed no bill of sale and that there was no property subject to manual delivery.

In this case the execution and recording of the Statement of Partnership constituted acts in conformity with the execution of the original partnership Agreement. There may have been other acts of which we are unaware that were also in conformity.

We note in passing that the Amended Partnership Agreement states on page 10 that it was executed on January 1, 1985. This is obviously untrue since the Statement of Partnership which included the Voglers was executed on January 7, 1985.

Based on the information provided and the foregoing analysis, we would have to conclude that the Voglers became partners with the Lawsons when the original partnership agreement was executed. Accordingly, the proportional ownership interests of the Lawsons' in the real property transferred to the partnership did not remain the same after the transfer as it was before the transfer. The transaction was therefore not excluded under Section 62(a)(2) and Property Tax Rule 462(j)(2)(B).

2. You next ask whether the "old" factored base year value can be reinstated and if so should it be done for the 1985-86 assessment year or for 1986-87.

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With respect to this question, our position is that if all the parties to a transfer of property agree to "undo" the transfer and are willing to restore to each other all consideration received, the transfer of property can be rescinded. It appears that by the Lawsons' amendment to the partnership agreement and the Voglers' written consent thereto and their statement that they gained no partnership interest that the parties have "undone" the transaction by which the Voglers became partners. This assumes of course that the Voglers have restored to the partnership any distributions they may have received until the partnership agreement was amended. The effect of such a rescission, which voids the initial transfer ab initio, would be to restore the parties to the position they held before entering into the transaction including restoration of the "old" factored base year value.

Under the theory of rescission, however, liabilities based on the facts of the situation while the transfer was in full force and effect are valid regardless of a subsequent rescission of that transfer (Long v. Newlin (1956) 144 Cal.App.2d 509; Scollan v. Government Employees Insurance Co. (1963) 222 Cal.App.2d 181). Parties remain liable for any debts validly incurred during the period before the parties rescinded their transfer.

Therefore, placing the parties in the position they held before the transfer does not include refund of the increase in property taxes caused by the change in ownership at a time when the Voglers were partners in Lawson Brothers. Property taxes are determined by the facts as they exist on the lien date of March 1, for the regular roll, or the date of change in ownership for the supplemental roll. Assessments made on those dates reflecting existing changes in ownership are valid (Parr-Richmond Industrial Corp. v. Boyd (1954) 43 Cal.2d 157; Doctor's General Hospital v. Santa Clara (1957) 150 Cal.App.2d 53). Thus, rescission of the partnership agreement under which the Voglers became partners of Lawson Brothers will not provide relief from any property tax increases which vested and became liens prior to the date of rescission. Accordingly, the "old" factored base year value should be reinstated for the 1986-87 assessment year.

Very truly yours,

Eric F. Eisenlauer
Tax Counsel

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