220.0508 **Partnership.** If a husband and wife hold a partnership interest in joint tenancy or as equal tenants in common and then obtain all partnership interests so that each spouse owns a 50 percent joint tenancy or tenancy in common interest, no change in ownership or control occurs since neither spouse owns more than 50 percent of the total partnership interests. The interest owned by each spouse is not attributed to the other.

The above conclusion is dependent upon there being no dissolution of the partnership on the withdrawal of the non-spousal partners. The partnership agreement executed prior to withdrawal must contain an explicit non-dissolution clause. C 7/10/89.

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-6593

July 10, 1989

[redacted] Avenue

Your letter dated May 2, 1989, to Richard H. Ochsner, Assistant Chief Counsel, has been referred to the undersigned for reply. The facts as set forth in your letter and as communicated to me via telephone can be summarized as follows:

Facts

The ownership of a partnership owning real property in California is currently as follows:

(i) The parents (H and W) own a 34 percent interest;

(ii) The son (S) owns a 33 percent interest; and

(iii) A corporation (C), wholly owned by S, owns the remaining 33 percent interest.

The partners contemplate the following transfer or steps:

1. S and C will transfer all their respective partnership interests to H and W, as joint tenants.

2. Thereafter, H and W will either have the partnership transfer its real property to themselves as joint tenants or to a trust of which they are the sole beneficiaries.

You have requested an opinion of the change in ownership consequences of the above-described proposed transactions.

Law and Analysis

Unless otherwise specifically noted, all section references are to the Revenue and Taxation Code.

Section 64 provides in pertinent part as follows:

> (a) Except as provided in subdivision (h) of Section 61 and subdivisions (c) and (d) of this section, the purchase or transfer of ownership interests in legal entities, such as . . . partnership interests, shall not be deemed to constitute a transfer of the real property of the legal entity.
>
> * * *
>
> (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.

Pursuant to Rule 462(j)(4)(A) of the Property Tax Rules of Title 18 of the California Code of Regulations, obtaining a majority ownership interest in a partnership within the meaning of section 64(c) is effected by obtaining direct or indirect ownership or control of more than 50 percent of the total interest in both partnership capital and profits.

No facts have been presented indicating that section 61(h) is applicable.

As to section 64(c), if the proposed transfers result in either H or W obtaining direct or indirect control of more than a 50 percent interest in partnership capital and profits, then, in such event, a change in ownership will be deemed to have occurred. In this case, you do not specify how H and W presently hold title to their 34 percent partnership interest. Assuming that title is held as joint tenants, the result of step 1 will be H and W holding 100 percent of the partnership interest as joint tenants.

Letter to Assessors No. 83/17 (July 15, 1983) states that it is the opinion of the legal staff that a husband and wife holding

an ownership interest in a legal entity as joint tenants are to be considered as separate individuals, each owning 50 percent of the entity. While referenced rule 462(j)(4)(A) refers to indirect" control, we have not interpreted this rule to mean that the interest owned in a legal entity by one spouse is to be automatically imputed to the other. Therefore, the proposed transfers to H and W should, for our purposes, result in H and W each, respectively, being considered the beneficial owner of exactly 50 percent of the partnership.

As section 64(c) speaks in terms of taxpayers obtaining a majority partnership interest (consisting of more than 50 percent), the transfers you propose should not result in a change in ownership under the provisions thereof.

The above conclusion is dependent, however, upon the withdrawal of partners C and S not causing a dissolution of the partnership. As you may be aware, section 15031 of the Corporations Code provides, inter alia, that the withdrawal of a partner causes the dissolution of a partnership unless otherwise provided in a written agreement signed by all the partners prior to the date of withdrawal.

Section 64(d), as referenced above in section 64(a), applies to property transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by section 62(a)(2). In such cases, the persons holding ownership interests in such legal entity immediately after the transfer are considered the "original coowners." Whenever more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership shall be deemed to have occurred. In this case, 66 percent of the partnership's interests are changing hands. Therefore, if section 64(d) is applicable because there has been a previous transaction excluded from change in ownership by section 62(a)(2), a change in ownership may result even in the absence of a change in control.

Section 63.1 provides an exclusion from change in ownership consequences for certain qualifying transfers between parents and their children. Such exclusion is not applicable, however, to transfers of partnership interests. Section 63.1 only applies to transfers of "real property" and that term, as defined in subdivision (c)(6), does not include interests in a legal entity.

Should H and W, after acquiring all partnership interests pursuant to the above, thereafter transfer such partnership

interest to a trust of which they are the sole beneficiaries, such transfer should be excluded from change in ownership consequences so long as the requirements of section 62(d) are otherwise satisfied.

Further, if, after H and W have acquired 100 percent ownership of the partnership, they choose to have the partnership transfer the property to themselves as joint tenants or to a trust which they beneficially own in equal shares, such transfer should also be excluded from change in ownership consequences. This exemption would result from the fact that such transfer would only constitute a change in the method of holding title in which proportional ownership interests remain the same after the transfer. Section 62(a)(2). If H and W are both the grantors of a trust and the trust's sole present beneficiaries, they will be its sole beneficial owners for our purposes. See section 62(d).

During our telephone conversation, we discussed section 63.1 in more detail. Such section provides an exclusion for qualifying transfers between parents and children of: (i) a principal residence or (ii) up to $1,000,000 of full cash value of other real property. The legislative history of such provision, as set forth in Chapter 48 of the 1987 Statutes, provides as follows:

> It is the intent of the Legislature that the provisions of Section 63.1 of the Revenue and Taxation Code shall be liberally construed in order to carry out the intent of Proposition 58 on the November 4, 1986, general election ballot to exclude from change in ownership purchases or transfers between parents and their children described therein. Specifically, transfers of real property from a corporation, partnership, trust, or other legal entity to an eligible transferor or transferors, where the latter are the sole owner or owners of the entity or are the sole beneficial owner or owners of the property, shall be fully recognized and shall not be ignored or given less than full recognition under a substance-over-form or step-transaction doctrine, where the sole purpose of the transfer is to permit an immediate retransfer from an eligible transferor or transferors to an eligible transferee or transferees which qualifies

> for the exclusion from change in ownership provided by Section 63.1. Further transfers of real property between eligible transferors and eligible transferees shall also be fully recognized when the transfers are immediately followed by a transfer from the eligible transferee or eligible transferees to a corporation, partnership, trust, or other legal entity where the transferee or transferees are the sole owner or owners of the entity or are the sole beneficial owner or owners of the property, if the transfer between eligible transferors and eligible transferees satisfies the requirements of Section 63.1. Except as provided herein, nothing in this section shall be construed as an expression of intent on the part of the Legislature disapproving in principle the appropriate application of the substance-over-form or step-transaction doctrine. (Emphasis added.)

As discussed, it might be possible to restructure your proposed transaction in some fashion so as to make effective use of the parent-child exclusion. Should such restructuring prove to be a possibility, it seems unlikely, in view of the above-quoted expression of legislative intent, that an assessor would aggressively apply the step-transaction doctrine so as to find a change in ownership.

As you may be aware, where a taxpayer utilizes a series of transfers or steps to effect a transfer which might otherwise have been accomplished by fewer transfers or steps, we generally recommend that any steps in the transaction be disregarded if the county assessor concludes that they are not supported by a business purpose other than avoiding higher property taxes. However, the legislature has specifically expressed its intent that such doctrine not be applied as indicated in the above-quoted provision so as to frustrate the parent-child exclusion.

The views expressed in this letter are advisory only and are not binding upon the assessor of any county. You may wish to consult the Marin Assessor and any other involved assessor in order to confirm that the subject property or properties will be assessed in a manner consistent with the conclusions stated above.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

Robert Lambert

Robert W. Lambert
Tax Counsel

RWL:wak
2533H

cc: Honorable James J. Dal Bon
Marin County Assessor
Mr. John W. Hagerty
Mr. Verne Walton