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June 15, 2000

Re: *Request for Legal Opinion – Applicability of Change in Ownership Exclusion to Sunroad Marina Assignment of Taxable Possessory Interest*

Dear Mr. _____ :

This is in reply to your letter of May 18, 2000 addressed to David Gau, Chief of the Policy, Planning and Standards Division, in which you request our opinion on the applicability of the exclusion set forth in Revenue and Taxation Code section 62, subdivision (a)(2) to an assignment of a taxable possessory interest. As you state in your letter, _____ Partners, LP (H _____) held a possessory interest in a marina and related facilities from the _____ Unified Port District (Port) under a lease between H and the Port. In November 1998 H _____ assigned its right, title and interest in the lease to S _____ Partners, LP. You have requested that we assume, for purposes of this opinion, that the assignment of the lease was a transfer that resulted in a change in the method of holding title while the proportional ownership interests of the transferors and transferees remained the same within the meaning of Revenue and Taxation Code section 62, subdivision (a)(2). Although we express no view as to whether the actual transfer at issue would be excluded from change in ownership under section 62, subdivision (a)(2), as set forth below, it is our opinion that the exclusion in that subdivision can be applicable to assignments of taxable possessory interests.

Law and Analysis

Revenue & Taxation Code section 60 defines "change in ownership" as 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." Specific examples of changes in ownership are set forth in section 161 which provides in relevant part

Except as otherwise provided in Section 62, change in ownership, as defined in Section 60, includes, but is not limited to:

* * *

(b) The creation, renewal, extension, or assignment of a taxable possessory interest in tax exempt real property for any term. For purposes of this subdivision:

* * *

(3) "Assignment" of a possessory interest means the transfer of all rights held by a transferor in a possessory interest.

Thus, an assignment of a taxable possessory interest is specifically included as a change in ownership. As you note in your letter, however, the introductory clause to section 61 conditions the definitions of change in ownership on the exclusions set forth in section 62. Furthermore, section 61 sets no limitation on the transfers to which the section 62 exclusions are applicable.

Section 62, subdivision (a)(2) provides, in relevant part, that "change in ownership shall not include"

* * *

(a)(2) Any transfer 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, that 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 stated above, there is nothing to suggest that section 62 exclusions are not applicable to transfers defined by section 61 as changes in ownership. Further, the plain language of section 62, subdivision (a)(2) excludes all qualifying proportional interest transfers and does not make a distinction between transfers of fee title interests and leasehold interests. As defined in section 61, subdivision (b)(3) an assignment of a taxable possessory interest is a transfer of all rights in the possessory interest. Consequently, the exclusion set forth in section 62, subdivision (a)(2) can be and is applicable to an assignment of a taxable possessory interest provided that all the conditions of that subdivision are met.

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The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

/s/ Louis Ambrose

Louis Ambrose
Tax Counsel

LA:tr

prop/prec/13genral/00/03lou

cc:

Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:70