



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Executive Director

March 30, 1998

Dear Mr. (Redacted):

This is in response to your letter on behalf of F (Redacted), LTD, a California limited partnership, to Lawrence A. Augusta, requesting our opinion under the facts set forth therein, whether the proposed transfer of water rights upon the dissolution of F (Redacted), LTD, would be a change in ownership requiring a reappraisal of the subject property. As we explained below, the answer to your question depends upon what is meant by the sentence "Each limited partner will receive the same percentage interest in the water rights which he or she currently owns as a limited partner."

You advise us that:

F (Redacted), LTD owns certain water rights in the San Gabriel Valley. Those water rights have been under the supervision of the Main San Gabriel Basin Watermaster since 1973 when the Basin Water Rights were adjudicated. According to the San Gabriel Watermaster's 1995-96 Annual Report, as of June 30, 1996 F (Redacted) held rights to 6,490 acre feet of groundwater in the San Gabriel Basin. This was approximately 3.3% of the total groundwater rights in the Basin. Although F (Redacted) owns the rights to 6,490 acre feet of groundwater, F (Redacted) has not produced (pumped) any of the water it owns since 1972-73, but has leased production of that water every year on one year leases to various water producers.

F (Redacted), LTD is a California limited partnership formed on November 1, 1971. The limited partnership was established upon the liquidation of an entity called F (Redacted), INC., which was a closely-held family corporation. (Agreement. Art III (p.1).) According to the Certificate and Agreement of Limited partnership ("Agreement," copy enclosed), the assets of F (Redacted), INC. were transferred to F (Redacted), LTD in accordance with ownership interests of the various shareholders of the liquidating corporation. (Agreement. Art VI, A(p.2).) In other words, the percentage interest of each shareholder in F (Redacted) INC, was the percentage assigned to each limited partner's capital account in F (Redacted), LTD.

In addition to capital accounts, the limited partnership agreement provides for income amounts to be established in the name of each limited partner and for partnership income and losses to be charged to those accounts in the same

percentages as those for the capital accounts. (Agreement. Art. VI B, D, (pp. 7,8) and Art. VII A (p.8).)

...The partnership terminates upon the first to occur of the following: (1) thirty years from the date the partnership was formed (November 1, 2001); (2) a vote of the limited partners owning a two-thirds interest in the partnership to dissolve the partnership; (3) the death, retirement or removal of a general partner (unless the remaining general partners elect to continue the partnership and a new slate of five general partners is elected); or (4) upon the sale/disposition of all of the assets of the partnership. (Agreement, Ar. XVI (p.19).) Upon dissolution, the partnership's assets are to be sold and distributed in accordance with the limited partners' percentage interests in profits and losses of the partnership. (Agreement, Art. XVII (pp. 19-20).)

Finally, I confirmed with one of the general partners of F (Redacted), LTD in July and September 1997 regarding the history of the various limited partners' ownership interest in F (Redacted), LTD. The general partner advised me that although the number of limited partners and the percentages for most limited partners had changed over the years, no limited partner had even come close to acquiring or accumulating a 50% ownership interest in the limited partnership (in 1971 R (Redacted) controlled a 23.18504% interest in the partnership through trusts over which he exercised control, including his wife's interest (in trust due to her death) and his children's interests (also in trusts).)

F (Redacted), LTD intends to transfer the interests of the various limited partners within the next year or so. Such transfers will occur as a part of the dissolution of the limited partnership. Each limited partner will receive the same percentage interest in the water rights which he or she currently owns as a limited partner. However, each limited partner will receive those rights in his or her individual capacity.

As you know, property will generally be re appraised for property tax purposes when there is a change in ownership Cal. Const. Art. XIII A, sec. 2, subd. (a). The legislature has defined what constitutes a change in ownership at Revenue and Taxation Code sections 60 et. seq. Section 60 provides 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, subd. (j) provides the 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." Section 61, subd (f) provides that change in ownership includes the "creation, transfer, or termination of any tenancy-in-common interest except as provided in subdivision (a) section 62..." Section 62(a) provides an exception to these rules for (1) transfers between co-owners that result in the change in the method of holding title to the real property transferred without changing the proportional interests of the co-owners in that real property, such as a partition of a tenancy in common, or for (2) 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, 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

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otherwise, in each and every piece of the real property transferred, remain the same after the transfer.

As quoted above, you advised that F (Redacted) LTD intends to transfer to its various limited partners, all of its water rights as a part of the dissolution of the partnership; and that "each limited partner will receive the same percentage interest in the water rights which he or she currently owns as limited partner." This may be interrupted two ways, and the change in ownership analysis varies depending on which interpretation is accurate.

If what is intended is that the partnership's water rights are to be deeded to the limited partners, as a single block, for example, as tenants in common, with each receiving a percentage interest equal to that partner's interest in the limited partnership, these transfers could be excluded from change in ownership and could be accomplished without reassessment pursuant to subdivision (a)(2) of section 62. If, on the other hand, it is intended that the water rights are to be deeded to the partners individually, in proportion to their interest in the partnership (i.e., a partner owning a 3.69892% interest is deeded the rights to 240.06 acre feet of water), this would constitute a complete change in ownership of the property so transferred, resulting in a 100% reappraisal of the water rights pursuant to subdivision (j) of section 61. *Munkdale v. Giannini* (1995) 35 Cal. App. 4th 1104. This is so because the incidents of ownership of the various groups of water rights then owned by the individual former partners would not remain the same after the transfers.

The views expressed in this letter are, of course, 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.

Sincerely,

Daniel G. Nauman
Tax Counsel

DGN:jd

cc: Hon (Redacted)
County Assessor
Mr. Dick Johnson, MIC: 63
Mr. Rudy Bischof, MIC: 64
Ms. Jennifer Willis, MIC: 70