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March 10, 1994

In Re: **Change in Ownership – Distribution of Partnership Interests Upon Death of Partners, Application of Parent-Child Exclusion.**

Dear Redacted

This is in response to your letter of January 25, 1994, requesting our opinion and any precedent letters concerning the change in ownership consequences and the application of the parent-child exclusion to the distribution of partnership interests upon the death of the each of the partners and the dissolution of the partnership.

You have submitted the following hypothetical situation for purposes of our analysis:

1. General Partnership was formed prior to March 1, 1975, by four siblings for the purpose of owning and managing certain real property in equal shares.
2. Several years ago, A died. His one fourth partnership interest was in a revocable trust, in which the remainder beneficiaries are his children and no distributions from the trust have yet been made.
3. B died six months after A, and his one fourth partnership interest was probated and thereafter distributed to a testamentary trust, in which his spouse is the sole income beneficiary.
4. C died six months after B, and her one fourth partnership interest was probated and thereafter distributed to her two children.
5. D just recently died, and her one fourth partnership interest is subject to probate. D's children are her sole beneficiaries, however, no distributions have been made.
6. Dissolution of the partnership, under the terms of the partnership agreement, occurred upon C's death. Thus, D intended to wind up the partnership and distribute the assets on a pro rata basis to the partners' successors in interest, but she died before the deeds were executed. D's executors will now complete the winding up and distribution by deeding co-tenancy interests in the real property to all successors in interest including D's children.

You wish to know the change in ownership consequences of the foregoing transfers and the availability of the parent-child exclusion with regard to the partnership distributions. For the reasons hereinafter explained, we reach the following conclusions: 1) the dissolution of a partnership due to the death of the partners and the winding up of the partnership by the sole surviving partner does not constitute a change in control/ownership of the partnership under Section 64, subdivision (c); 2) although the parent-child exclusion is not applicable to transfers of the partnership interests to the deceased partners' heirs, no change in ownership occurs if no heir receives more than 50% of the partnership interests; and 3) the partnership's distribution of interests in real property to the deceased partners' heirs may be excluded under Section 62, subdivision (a)(2), providing the percentages of the property interests transferred are exactly proportionate to the partnership interests held by each heir.

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."

Section 61, subdivision (i) states that 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.

Dissolution/Winding Up or Partnership by D; No Change in Control.

Based on the hypothetical facts submitted, each of the partners (siblings) held an equal 25% ownership interest in the partnership (we assume this means partnership capital and profits) from the time of its formation through its termination. The partnership agreement apparently provided that upon a partner's death, the deceased partner's 25% partnership interest would pass to the heirs of the deceased partner, not to the surviving partners, and the business of the partnership would continue through the death of the third partner. At this time, the partnership would dissolve and the partnership interests would be liquidated and distributed pro rata by D to herself, as the surviving partner, and to the deceased partners' heirs.

We also assume that the agreement did not authorize any of these heirs to participate as a partner, since no such authorization is mentioned in your facts. Section 9762 of the California Probate Code provides that authorization permitting the decedent's representative to participate as a partner in a partnership in which the decedent was a general partner must be made in the written partnership agreement or by court order. Moreover, California Corporations Code Section 15018 provides that, subject to agreement between the partners, no person can become a member of a partnership without the consent of all the partners. Any purchase, assignment, or devise of a partner's interest does not make the purchaser, assignee, or personal representative a partner. Thus, at the time of the death of C, the heirs of the three deceased partners held beneficial interests in the partnership capital and profits (in proportion to the percentage held by the deceased partners), but were without all the rights, powers and duties accorded a partner. Only one partners, D, remained, so the partnership dissolved pending winding up by D.

Since none of the deceased partners' heirs became partners, and the sole remaining partner was D, it might be contended that D acquired control of the partnership, resulting in a change in ownership of the partnership, by virtue of her 100% termination rights over all of the partnership interests. However, it has never been our interpretation of the change in ownership statutes that one who is the surviving partner in a partnership (following the deaths of the other partners) and who thereby has exclusive authority over its winding up, is to be considered in control of the partnership, so that indirect ownership/control of the partnership can be attributed to him/her for change in ownership purposes, providing such surviving partner owns less than 50% of the partnership capital and profits.

We have consistently taken the position in the past that obtaining control of a partnership for change in ownership purposes requires the purchase or transfer of partnership interests within the meaning of Section 64, subdivision (c), which states in pertinent part:

When a corporation, partnership, or other legal entity or any other person obtains control, as defined in Section 25105, in any corporation, or obtains a majority 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.

These statutory provisions are interpreted by Property Tax Rule 462 (j), which provides in part:

(3) Transfers of ownership interests in legal entities. Except as otherwise provided in subdivision (4), the purchase or transfer of corporate stock, partnership shares, or ownership interests in other legal entities is not a change in ownership of the real property of the legal entity.

(4) Exception:

(A) When any corporation, partnership, other legal entity or any person:

(ii) obtains direct or indirect ownership of more than 50 percent of the total interest in both partnership capital and profits,

Upon the acquisition of such direct or indirect ownership or control, all of the property owned directly or indirectly by the acquired legal entity is deemed to have undergone a change in ownership.

Based on the foregoing, D at no time acquired more than her 25% interest in the partnership capital and profits. The fact that D was the only remaining partner after C's death and held 100% of the voting power and decision-making authority over the partnership affairs for purposes of winding up, does not mean that D acquired any greater interest in the partnership capital and profits. This conclusion is consistent with the Corporations Code and Probate Code provisions noted above stating that on the death of a partner, unless the decedent's personal representative is authorized to continue as a partner in the partnership, the surviving partner has the exclusive right and duty to continue in possession of the partnership and settle its business. (See Corporations Code Section 15021-15045.)

As such, the surviving partner is similar to a trustee in that he/she has the right to possession and control of all the partnership property until the affairs of the partnership are wound up, but receives no vested or beneficial interest in the partnership or its assets by virtue of this "trust". Thus, where full authority equivalent to 100% voting control is given to one partner as a consequence of the death of the other partners and is solely for purposes of winding up the partnership and distributing its assets, we would conclude that it is not tantamount to control of the partnership within the meaning of Section 64, subdivision (c), resulting in a change in ownership of the partnership.

Transfer of Partnership Interests to Partners' Heirs; Ineligible for Parent-Child Exclusion, but No Change in Control.

As to the transfer of each deceased partner's 25% interest in the partnership to his/her heirs (children), the parent-child exclusion is not available for two reasons: 1) the exclusion is applicable only to transfers of real property, not interests in partnerships or other legal entities, and 2) by its terms it is applicable only to transfers between parents and their children, not between legal entities and children.

For purposes of determining whether a transfer is excluded from change in ownership consequences under Section 63.1, it is necessary to determine in each case whether an "eligible transferor" transferred real property to an "eligible transferee". Section 63.1 provides in relevant part:

- (a) Notwithstanding any other provision of this chapter, a change in ownership shall not include either of the following purchases or transfers for which a claim is filed pursuant to this section:
 - (2) The purchase or transfer of the first one million dollars (\$1,000,000) of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children.
- (c) As used in this section:
 - (1) "Purchase or transfer between parents and their children" means either a transfer from a parent or parents to a child or children of the parent or parents or a transfer from a child or children to a parent or parents of the child or children.

Based on the facts you provided, the respective heirs (children) of the partners A, B, C, and D received a 25% partnership interest rather than an interest in real property at the time of each partner's death. Moreover, the transferor of the real property is the partnership and not the parents. Finally, there is no indication that all of the heirs of the deceased partners are the children of such partners as defined by Section 63.1, subdivision (c) (2). Accordingly, these transfers do not qualify for the parent-child exclusion.

However, Section 64, subdivision (a) provides that 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 unless, as previously noted, pursuant to Section 64, subdivision (c), the transfer results in an individual or an entity acquiring more than 50% of the ownership interests in the legal entity.

Under the assumed facts, each of a partners' collective heirs shared a 25% interest in the partnership capital and profits. Since none of these transfers presumably resulted in any heir obtaining an interest of more than 50 percent in the partnership's capital and profits, the transfer of each deceased partner's 25% partnership interest did not result in a change in ownership.

Transfers of Interests in Real Property from Partnership; Excluded if Transferred in Same Proportionate Shares.

The distribution of interests in the partnership's real property to the partners' respective heirs will constitute a change in ownership unless excluded under the Section 62, subdivision (a) (2), which requires that the proportional ownership interests of the transferor (partnership) and the transferees (heirs) remain the same following the transfer.

Section 62, subdivision (a)(2) excludes from change in ownership:

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, 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.

The statutory provisions of Section 62, subdivision (a) (2) have been interpreted by subdivision (j) (2) (B) of Property Tax Rule 462. That rule states in pertinent part:

[Excluded from the change in ownership provisions 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 the transfer. (The holders of the ownership interests are represented by stock, partnership shares, or other types of ownership interests, shall be defined as "original co-owners" for purposes of determining whether a change in ownership has occurred upon the subsequent transfer(s) of the ownership interests in the legal entity.)

With regard to the transfer of real property from a legal entity to the entity's partners/shareholders specifically, subdivision (j) (2) (B) provides the following examples:

Examples:

(iv) Corporation X owns Blackacre and Whiteacre (both are of equal value). A & B each own 50 percent of Corporation X's shares. X transfers Whiteacre to A and Blackacre to B. Change in ownership of 100 percent of both Blackacre and Whiteacre.

(v) A transfer of real property from Corporation X to its sole shareholder. No change in ownership.

The hypothetical you have described may be a parallel situation to the example in subdivision (2) (B) (v). Partnership is terminating and distributing to each partner's heirs 25% of each real property owned by Partnership, based on the 25% partnership interest which each

March 10, 1994

partner's heirs collectively own. However, to maintain exact proportionality as required, it will be necessary for the Partnership to identify the percentage of partnership interest currently held by each heir and to transfer to each heir the same percentage of interest in each of the partnership real properties. Thus, if A has two heirs each holding a 12 ½% partnership interest, partnership must distribute to each of these heirs an equivalent 12 ½% interest in each of the real properties. The transfers will be excluded from change in ownership under Section 62, subdivision (a) (2) only if the exact percentage of interests in the real properties is transferred in return for the exact percentage of partnership interests, so that the transfer results solely in a change in the method by which heirs hold title to the real properties.

In response to your request for precedent letters, please find copies of the following letters enclosed which discuss the application of several change in ownership provisions to transfers of partnership interests under varying sets of circumstances.

Elbrecht Letter	June 4, 1986
McManigal Letter	May 18, 1989
Cazadd Letter	August 26, 1992

We suggest that you also review *Kern v. Imperial County*, 226 Cal.App.3d 391.

In addition, for your future reference on such matters, you may wish to purchase from the State Board of Equalization the Property Tax Law Guide, Volume 3, which contains annotations of our opinion letters and correspondence, interpreting property tax laws, rules, and court cases.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described properties will be assessed in a manner consistent with the conclusions stated herein.

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

Sincerely,

Kristine Cazadd
Tax Counsel

KEC:ba
Attachments

cc:

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Executive Secretary

June 4, 1986

Dear

This is in response to your letter of May 12, 1986 to Redacted in which you ask our opinion about the application of the "step transaction doctrine" in the following situation:

"A husband and wife who own an apartment building propose to transfer the apartment building to a limited partnership in which they will each own a 50% interest. Subsequently, either by gift or sale, they propose to issue partnership interests to their six children. The purposes for setting up the partnership and issuing partnership interests, rather than co-ownership interests to the children are to provide income to the children which would not be taxable to the parents, to transfer property to the children gradually rather than entirely at the death of the parents, and to limit the liability of the children which might arise from direct ownership of the property."

You have stated that under Revenue and Taxation Code sections 62(a)(2), 64(a) and 64(d.), there would be no change in ownership upon the original transfer by the parents to the partnership or upon successive transfers of up to 50 percent of the ownership interests in the partnership to the children. In your opinion, the "step transaction doctrine" is inapplicable here because there is a valid business purpose for transferring the property to a partnership owned by the parents before transferring the partnership interests to their children.

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 substantially equal to the value of the fee interest.

Included in the definition of change in ownership by section 61(i) is:

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

However, section 62(a)(2) excludes from a change in ownership:

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, 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. The provisions also excluded from change in ownership under the provisions of subdivision (b) of Section 64.

Section 64 (a) deals with the transfer of ownership interests, such as interests in partnerships and states:

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 corporate stock or partnership interests, shall not be deemed to constitute a transfer of the real property of the legal entity.

Section 64(c) provides that:

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 interests shall be a change of ownership or property owned by the corporation, partnership, or other legal entity in which the controlling interest is obtained.

Section 64(d), in pertinent part, states that:

If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in such legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests representing cumulatively 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 of that real property owned by the legal entity shall have occurred, and the property which was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

These statutory provisions are interpreted by subdivision (j) of property tax Rule 462, which states, in pertinent part:

(1) Transfers of property to and by legal entities. Except as is otherwise provided in subdivision (2), the transfer of any interest in real property to a corporation, partnership, or other legal entity is a change in ownership of such real property transferred.

(2) Exclusions

(B) 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 the transfer. (The holders of the ownership interests in the transferee legal entity, whether such interests are represented by stock, partnership shares, or other types of ownership interests, shall be defined as “original co-owners” for purposes of determining whether a change in ownership has occurred upon the subsequent transfer(s) of the ownership interests in the legal entity.)

(3) Transfers of ownership interests in legal entities. Except as is otherwise provided in subdivision (4), the purchase or transfer of corporate stock, partnership shares, or ownership interests in other legal entities is not a change in ownership of the real property of the legal entity.

(4) Exceptions:

(A) When any corporation, partnership, other legal entity or any person:

(ii) obtains direct or indirect ownership of more than 50 percent of the total interest in both partnership capital and profits.

(B) When real property transferred to a corporation, partnership or other legal entity is excluded from a change in ownership pursuant to (2)(B) and the “original co-owners” subsequently transfer in one or more transactions more than 50 percent of the total control or ownership interests in the entity as defined in (4)(A). For purposes of determining whether more than 50 percent of the total control or ownership interests in the entity has been transferred, transfers of such interests by the “original co-owners” shall be cumulated beginning with the time of the first ownership interest transfer.

Assuming that Husband and Wife originally held equal ownership interests in the apartment building, the transfer from Husband and Wife to a partnership in which Husband and Wife each took back a 50 percent interest could be excluded from a change in ownership under section 62(a)(2) because proportional ownership interests in the property will be maintained after the transfer. Furthermore, subsequent transfers of ownership interests in the partnership to the couple’s children would not constitute a change in ownership under section 64(a) and Rule 462(j)(3).

However, section 64(c) and its accompanying Rule 462(j)(4) indicate that a change in ownership will occur if more than a 50 percent interest in partnership profits or capital is acquired by any person or entity. Thus, the acquisition by one of the children of such an interest would constitute a change in control and therefore a change in ownership of the partnership. Moreover, since the transfer to the partnership was excluded from change in ownership by section 62(a)(2), a change in ownership would also occur under section 64(d) and Rule 462(j)(4)(B) if more than 50 percent of the interests in the partnership were subsequently transferred.

You have asked for our opinion about the application of the “step transaction doctrine” in these factual circumstances. The “step transaction doctrine,” a federal income tax doctrine which has been applied to property tax transfers, asserts that the substance of a transaction rather than the form should determine the tax consequences (Commissioner of Int. Rev. v. Court Holding Co.

June 4, 1986

(1945) 324 U.S. 331, 334). Unnecessary steps which are taken merely to circumvent the intent of the change in ownership statutes will be disregarded and the substance of the transaction will determine if a change in ownership has occurred.

This doctrine, of course, is not applicable unless unnecessary steps to avoid a change in ownership have been taken. A determination of whether or not a step is necessary can only be made by examining all of the circumstances, including such factors as business purpose and timing of the steps, surrounding the transactions. In the transaction you have described, the step in question is the transfer from Husband and Wife to a partnership in which they each take back a 50 percent interest. Such a step would not be considered unnecessary if there was a valid business reason for structuring the transaction in this manner. If, for example Husband and Wife want to shield themselves from liability while they were in the process of transferring the partnership interests to their children, it could be concluded that a valid business reason for transferring the property into a partnership on a proportional basis exists.

It is, of course, the role of the Assessor to ultimately evaluate the facts to determine if he is satisfied with the sufficiency of the evidence in support of a taxpayer's assertion that a valid business reason for a particular transaction exists. Our views are advisory only and are not binding on the assessor of any county. You may therefore wish to consult the Assessor of the appropriate county in order to confirm that the described transfer would be treated in a manner consistent with the conclusion stated above.

Very Truly Yours,

Barbara G. Elbrecht
Tax Counsel

BGE:cb

cc:

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CINDY RAMBO
Executive Director

May 18, 1989

Dear Redacted

This is in response to your request that we advise of possible change in ownership consequences under the following circumstances:

ABC Partnership, which owns real property, has as its partners XY Partnership (64% interest), X as an individual (20% interest), and X and Wife as Husband and Wife (community property) or as joint tenants or equal tenants in common (16% interest). Both X and Y have a 50% interest in XY Partnership.

Y dies, XY Partnership is dissolved or otherwise terminates, and X as an individual acquires another 32% interest in ABC Partnership and Y's Estate acquires the other 32% interest therein.

As you are aware, Revenue and Taxation Code section 64(c) states, in part, that when any person obtains a majority ownership interest in any partnership through the purchase or transfer of a partnership interest, such purchase or transfer of such interest shall be a change of ownership of property owned by the partnership. Upon Y's death and dissolution or termination of XY Partnership, X's interest in ABC Partnership totaled 60%, computed as follows:

32% interested obtained from former XY Partnership.

20% interest still held as an individual.

8% interest still held as husband/individual.

Thus, since X obtained a majority ownership interest in ABC Partnership through the transfer of a partnership interest from the former XY Partnership, such transfer resulted in a change of control under section 64(c) and a change in ownership of the property owned by ABC Partnership.

It might be contended that X had control, direct and indirect, of ABC Partnership prior to Y's death by virtue of his 32% interest in XY Partnership (indirect), his 20% interest (direct) and his 8% interest (also direct), such that no change in control occurred as the result of Y's death. It has been our interpretation of the change in ownership statutes and rules, however, that for one who is a partner in a partnership, shareholder in a corporation, etc., to be considered to be in control of the entity, such that indirect ownership/control of the entity can be attributed to him or her for change in ownership purposes, that person must have more than a 50%

May 18, 1989

interests in the partnership, corporation, etc. Thus, had X had a 50.01% or more interest in XY Partnership such that he had control thereof, he would have been regarded as having indirect control of 64% of ABC Partnership from the inception, and Y's death would not have resulted in a change in control or change in ownership. As X only had a 50% interest in XY Partnership, however, such was not the case and indirect control of XY Partnership could not be attributed to him for change in ownership purposes. See in this regard Mr. Eric Eisenlauer's May 3, 1989, memorandum to Mr. Verne Walton, copy enclosed.

Very Truly Yours,

James K. McManigal, Jr.
Tax Counsel

JKM:wak
2420H

Enclosure

cc:



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BURTON W. OLIVER
Executive Director

August 26, 1992

Redacted

Re: Advisory Opinion Regarding Change in Ownership-
Transfer or Partnership and Real Property Interests –
Parent/Child Exclusion.

Dear Redacted

This is in response to your letter of June 17, 1992, in which you requested our opinion as to whether there is a change in ownership as a result of the following circumstances described in your letter:

1. In 1968 a revocable living trust was created by Husband and Wife. "Husband" died in 1971, at which time the trust assets were divided between the husband's portion ("Trust") and the Wife's portion. The Trust assets consisted of:
 - a 25 percent partnership interest in Partnership 1;
 - a 33 percent partnership interest in Partnership 2;
 - a 25 percent ownership interest in real property.
2. On Husband's death, Wife and children were entitled to the net income of the Trust. Upon Wife's death recently, Trust is being terminated, and all assets are to go to children in equal shares as the remainder beneficiaries of the Trust.

The question is whether the transfer of the partnership and property interests to the beneficiaries will constitute a change of ownership for property tax reassessment purposes.

LAW AND ANALYSIS

Rev. & Tax. 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."

However, if the transfer involves ownership interests in a partnership or other legal entity, then the general rule of Section 64(a) applies. Section 64(a) provides the following exclusion from a change in ownership:

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 corporate stock or partnership interests, shall not be deemed to constitute a transfer of the real property of the legal entity.

Of relevance here is the exception under Section 64(c) which states in pertinent part:

When a corporation, partnership, or other legal entity or any other person obtains control, as defined in Section 25105, in any corporation, or obtains a majority 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.

These statutory provisions are interpreted by Property Tax Rule 462 (j), which provides in part:

(3) Transfers of ownership in interests in legal entities. Except as otherwise provided in subdivision (4), the purchase or transfer of corporate stock, partnership shares, or ownership interests in other legal entities is not a change in ownership of the real property of the legal entity.

(4) Exceptions:

(A) When any corporation, partnership, other legal entity or any person:

(ii) obtains direct or indirect ownership or more than 50 percent of the total interest in both partnership capital and profits,

Upon the acquisition of such direct or indirect ownership or control, all of the property owned directly or indirectly by the acquired legal entity is deemed to have undergone a change in ownership.

Based on the foregoing, it is clear that the transfer of the partnership interests will not trigger a change in ownership, unless the transfer of an interest or interests results in more than 50 percent of the total interest in one or both of the partnerships' capital and profits being acquired by one or more of the children.

Since under the assumed facts, the children will receive partnership interests of less than 25 percent and 35 percent, respectively, the transfers of those interests, of themselves, will not constitute a change in ownership of the partnerships' properties. And assuming that the transfers

will not result in any child gaining an interest or more than 50 percent in either partnership's capital and profits, the transfers described above will not constitute a change in ownership of either partnership's property. However, if there is a subsequent transfer, whereby any child obtains a cumulative interest in a partnership's capital and profits in excess of 50 percent, a change in ownership requiring reassessment of the all property owned by the partnership involved would occur.

With regard to the transfer of the Trust's 25 percent interest in the real property to the children, Section 63.1 (a) provides that a change in ownership shall **not** include,

(2) The purchase or transfer of the first \$1,000,000 of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children.

"Transfer" includes and is not limited to, any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust. Section 63.1 (f), however, limits the application of these provisions to purchases and transfers of real property completed on or after November 6, 1986.

Under the foregoing provisions, it is clear that a \$1,000,000 exclusion is available with respect to real property owned by an eligible transferor in trust and transferred to his children. In our view, the Husband was an eligible transferor since, when he died in 1971, the beneficial interest in the Trust real property passed from him to his Wife for life and to his children as equitable remaindermen. Wife received only a life estate with no remainder interests in the Trust property. Those remainder interests were owned by the children until Wife died. Upon her death, on or after November 6, 1986, their remainder interests became possessory (i.e., they became present beneficial interests), and a change in ownership occurred at that time by operation of law. The rationale for this conclusion is that it was the interest in real property of the Husband and not the Wife which the children received when the Trust terminated.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described properties will be assessed in a manner consistent with the conclusions stated herein.

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

Very Truly Yours,

Kristine Cazadd
Tax Counsel

cc:

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