STATE OF CALIFORNIA

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December 11, 1997

1.

Re: Request for Opinion Letter
Transfer of Title to W El General Partnership

Dear Mr. I

I am writing in response to your letter of August 27, 1997 addressed to Assistant Chief Counsel Larry Augusta in which you request a legal opinion concerning the Proposition 13 reassessment consequences resulting from a transfer of real property to a partnership. You also ask whether the proposed transfer would be subject to the documentary transfer tax. I have reviewed the accompanying documents, which include the partnership agreement, gift tax and partnership returns, and an unrecorded quitclaim deed conveying a portion of the property prior to the grant deed to the partnership. I am also in receipt of your letter of September 3, 1997 with the enclosed copy of an unrecorded 1984 grant deed conveying the property to the partnership. In that letter, you specifically ask for our determination of whether a reassessment should occur under Proposition 13 if the grant deed is recorded.

Based on my review of the foregoing, I understand the relevant facts to be as follows: Prior to April 26, 1984, I ("W ") held full fee title to the subject property. On that date, she conveyed by quitclaim deed a one-eighth interest in the property to her son, ("E ") as a tenant in common. The quitclaim deed was not recorded. On the same day, W and E executed a general partnership agreement naming W or her successor as a "Class A" general partner and E or his successor or assign as a "Class B" general partner. In the "Capital Contributions" paragraph the agreement recites that, simultaneous with the execution of the agreement, the partners have contributed their respective percentage interests in the subject property. W and El conveyed their interests in the subject property to the partnership by an unrecorded grant deed, dated April 26, 1984.

12/12/97 — Sisson

As set forth in detail below, the unrecorded grant deed conveyed full fee title in the property from W. and E to the partnership and, therefore, W presently has no legal title to transfer. Additionally, the quitclaim deed, also not recorded, validly conveyed a one-eighth fee interest in the property from W to E. and resulted in a change in ownership. Likewise, the transfer of the property to the partnership resulted in a change in ownership for which no exclusion is available because W. and E did not acquire interests in both partnership capital and profits proportional to their respective interests in the property. As to the applicability of the documentary transfer tax, that tax is administered at the county level and your question should be directed to the appropriate county department.

Law and Analysis

Valid Deed Transfers Both Beneficial and Legal Title to the Property.

The grant deed conveying the property to the partnership constituted a valid deed, regardless of the failure to record, and transferred the full fee interest in the property. The requirements for a valid deed are a grantor, a grantee, a writing and subscription, delivery and acceptance. Recordation is not essential to the validity of deed. 4 Witkin, Summary of California Law, Real Property (9th ed. 1987) § 140, p. 354. Here, the grantors, W and E conveyed the property to the grantee, the partnership, by means of an executed writing which incorporated a full legal description of the property. The partnership agreement acknowledges delivery and acceptance in paragraph 3.1 Capital Contributions which paragraph sets forth the contribution of the subject property to the partnership.

Pursuant to Civil Code §1105, a deed conveying the property is presumed to grant fee simple title, unless it appears from the grant that a lesser estate was intended. The grant deed states that W and E hereby grant to [the partnership] the following described real property in the City of Los Angeles" and refers to "Exhibit A" which is a legal description of the property. In our view, because there is no indication that less than the full fee interest was intended, the grant deed transferred both legal and beneficial title to the partnership. At this point, W has no interest in the property left to transfer and, moreover, recordation of another deed would not effect a conveyance in any event since the grant deed already conveyed the property to the partnership.

Quitclaim deed was valid and resulted in a change in ownership.

Consistent with the foregoing analysis, the unrecorded quitclaim deed from W to E was a valid deed and conveyed a one-eighth fee interest in the property. The first three elements - grantor, grantee and writing and subscription - were clearly met and delivery and acceptance can be inferred from E exercise of a right of ownership when he and W transferred the property to the partnership.

Furthermore, the transfer resulted in a change in ownership of E one-eighth interest in the property pursuant to Revenue and Taxation Code[1] section 60. Section 60 defines a 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." Here, the deed conveyed a present interest in the property to E as a tenant in common. Although E did not take physical possession, he exercised his right to the beneficial use by electing to transfer it to the partnership in return for partnership interests. *See Pacific Southwest Realty v. County of Los Angeles* (1991) 1 Cal.4th 155, 164. Finally, the value is substantially equal to the fee interest because a fee simple interest was conveyed.

Transfer of property to partnership resulted in a change in ownership.

The transfer of the property by grant deed to the partnership also resulted in a change in ownership for which no exclusion is available. Section 61, subdivision (j) provides that 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." You note in your letter, section 62, subdivision (a)(2) which, in pertinent part, excludes from change in ownership

> Any transfer between . . . individuals and a legal entity . . ., such as a cotenancy to a partnership . . ., that results solely in a change in the method of holding title 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 property transferred, remain the same after the transfer."

In this case, the exclusion afforded by section 62, subdivision (a)(2) is inapplicable because the proportional interests in both partnership capital and profits did not remain the same after the transfer. Pursuant to paragraph 3.1 of the partnership agreement, Capital Contributions, the capital accounts reflect the fair market value of the property contributed by each partner and, thus, are proportional to their interests in the real property. With respect to the profits interests, however, under Paragraph 5.1, Operating Distributions, the Class A General Partner, Whiteman, is guaranteed the first $252,000 from net operating cash flow with any excess to be distributed 90 percent to Elbaum, the Class B General Partner, and 10 percent to Whiteman. Because profits are distributed according to a formula not representative of the property interests contributed by each partner, the transfer does not qualify for exclusion under section 62, subdivision (a)(2).

Documentary Transfer Tax

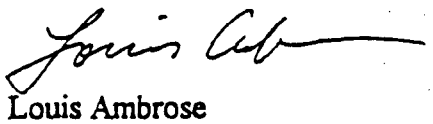
We are unable to provide an answer to your question concerning whether the transfer proposed in your letter may be exempt from the documentary transfer tax pursuant to Revenue and Taxation Code section 11923(d). Section 11911 authorizes counties to adopt ordinances

[1] All section references are to the Revenue and Taxation Code, unless stated otherwise.

imposing a documentary transfer tax on documents conveying real property within the county. Therefore, this question should be directed to the Los Angeles County office that administers that tax.

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.

Yours very truly,



Louis Ambrose
Tax Counsel

LA:so
h:/property/precednt/13/General/1997/97010.lou

cc: Hon. Kenneth Hahn, Los Angeles County Assessor
Mr. Dick Johnson, MIC:63
Policy, Planning and Standards Division, MIC:64
Ms. Jennifer Willis, MIC:70