



## STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA  
 PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082  
 916-323-3094 • FAX 916-323-3387  
 www.boe.ca.gov

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February 29, 2012

**Re: *Reassessment***  
***Assignment No.: 11-293***

Dear Ms. \_\_\_\_\_ :

This is in response to your letter to Mr. Randy Ferris, Acting Chief Counsel, dated November 16, 2011, in which you request our opinion as to whether certain real properties would undergo reassessment in light of the transfers discussed below.<sup>1</sup> As explained below, it is our opinion that the properties were properly reassessed.

### **Facts**

C \_\_\_\_\_ M \_\_\_\_\_ (C) and K \_\_\_\_\_ N \_\_\_\_\_ (K) inherited two pieces of property from their father at the time he passed. The two properties were transferred from their father's trust to C \_\_\_\_\_ and K \_\_\_\_\_ as tenants in common. You state in your letter that the Properties were transferred to C \_\_\_\_\_ and K \_\_\_\_\_ as their separate property. After inheriting the Properties, on September 9, 2009, Articles of Organization for OGS, LLC (OGS) were filed with the Secretary of State. On January 18, 2010, C \_\_\_\_\_ and J M \_\_\_\_\_ (J) as trustees of the M \_\_\_\_\_ Family Trust (the M Trust) and K \_\_\_\_\_ and E N \_\_\_\_\_ (E \_\_\_\_\_) as trustees of the N \_\_\_\_\_ Living Trust (the N Trust) entered into an operating agreement whereby each trust held 50 percent of the membership interests in OGS. C \_\_\_\_\_ and K \_\_\_\_\_ were named managers of OGS. The M Trust is a revocable living trust; and while we were not provided with a copy of the N Trust, we assume it is revocable as well.

On February 9, 2010, deeds were recorded with the Los Angeles County Recorder, whereby C \_\_\_\_\_ and K \_\_\_\_\_ transferred the Properties to OGS. Based on that transfer, the Los Angeles County Assessor reassessed the Properties.

### **Law and Analysis**

Article XIII A, section 2 of the California Constitution requires that real property be reassessed upon a change in ownership. 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."

<sup>1</sup> It is our understanding that appeals have been filed with the Los Angeles County Assessment Appeals Board (AAB) and that the hearing dates are still pending. As you know, we also contacted the Los Angeles County Assessor's Office to offer the opportunity to confirm the facts associated with this case.

Revenue & Taxation Code<sup>2</sup> section 61, subdivision (j) provides that the transfer of any real property interest between a person and a corporation, partnership, or other legal entity results in a change in ownership of the transferred interest. Property Tax Rule<sup>3</sup> 462.180, subdivision (a) specifically provides that the transfer of any real property interest to a corporation, partnership, LLC, or other legal entity results in a change in ownership of the transferred interest. Under Rule 462.180, subdivision (a), "real property" or "interests in real property" includes fractional interests such as a tenancy in common. Therefore, any real property transfer to a limited liability company, whether from one of its members, or from another legal entity, results in a change in ownership of the transferred interest, unless there is an available exclusion.

Section 62, subdivision (a)(2) provides an exclusion, known as the "proportional ownership interest exclusion," for transfers that might otherwise result in a change in ownership under section 61, subdivision (j) or Rule 462.180, subdivision (a). (See also Rule 462.180, subdivision (b)(2).) This exclusion excludes from change in ownership a transfer of real property between legal entities or between a legal entity and an individual that results solely in a change in the method of holding title, and in which the proportional ownership interests of the transferors and transferees, whether represented by stock, partnership or LLC interests, or otherwise, in each and every piece of real property transferred, remains the same before and after the transfer. Thus, a transfer that would otherwise result in a change in ownership under section 61, subdivision (j) and Rule 462.180, subdivision (a), may be excluded from change in ownership if it meets the requirements of section 62, subdivision (a)(2).

An exclusion is also available under section 63 for interspousal transfers. This exclusion is available for transfers *between spouses*, but does not apply to transfers of property interests from a spouse to or from an LLC or other legal entity even if a spouse is an owner of the LLC or other legal entity. (See Rule 462.220 and Property Tax Annotation<sup>4</sup> (Annotation) 220.0274.) Therefore, although transfers of interests in legal entities between spouses (i.e., to one from another) qualifies for the exclusion, the transfer of property or legal interests from a spouse to an entity such as an LLC does not qualify for the exclusion.

Family Code section 760 states, "[e]xcept as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property." There is a general presumption that property acquired during marriage by either spouse other than by gift or inheritance is community property unless traceable to a separate property source. (*In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 290.) As set forth above, the membership interests in OGS are owned by the M Trust and the N Trust. For property tax purposes, we "look through the trust," such that the trustor/transferor is the present beneficial owner of property held in a revocable trust. (See Annotation 220.0783.) Therefore, since C and J, and K and E are the trustors of their respective trusts, they are considered to be beneficial owners of any property in their trust, including the membership interests in OGS.

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<sup>2</sup> All statutory references are to the Revenue and Taxation Code unless otherwise specified.

<sup>3</sup> References to "Rules" are section references to Title 18 of the California Code of Regulations.

<sup>4</sup> Property Tax Annotations are summaries of the conclusions reached in selected legal rulings of Board legal counsel published in the Board's Property Tax Law Guide and on the Board's website. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations).

Here, prior to the transfer, C and K owned the Properties as their separate property. However, they transferred the Properties to OGS, an LLC whose members are the M Trust and the N Trust. Because OGS was created during the marriages, the membership interests in OGS are presumed to be the community property of C and K and their respective spouses. When entity interests are owned as community property, the spouses are treated as having equal interests in the entity as if they were joint tenants. (See Annotation 220.0040). Therefore, for property tax purposes, C, K, E and J are treated as each having 25 percent interests in OGS.

As set forth above, the proportional ownership interest exclusion excludes from change in ownership a transfer of real property between legal entities or between a legal entity and an individual that results solely in a change in the method of holding title, and in which the proportional ownership interests of the transferors and transferees, whether represented by stock, partnership or LLC interests, or otherwise, in each and every piece of real property transferred, remain the same before and after the transfer. Here, prior to the transfer of the Properties to OGS, C and K each owned 50 percent of the Properties. After the transfer, the Properties were owned by OGS, which in turn is considered to be owned 25 percent each by C, J, K and E.<sup>5</sup> Therefore, section 62, subdivision (a)(2) is not satisfied.<sup>6</sup> Finally, section 63, the interspousal exclusion, is not applicable here since the transfer of the Properties was made from C and K to OGS and not to their respective spouses. (See Annotation 220.0042.)

The views expressed in this letter are only advisory in nature. They represent the analysis of 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,

/s/ Neha Duggal

Neha Duggal  
Tax Counsel

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cc: Honorable  
County Assessor

Mr. David Gau MIC:63  
Mr. Dean Kinnee MIC:64  
Mr. Todd Gilman MIC:70

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<sup>5</sup> OGS's Operating Agreement specifies that the Mora and Niles Trusts are the members of the LLC. For purposes of Rev. & Tax. Code, § 62, subd. (a)(2), proportional ownership is measured by the capital and profits interests of the members of an LLC. (See Annotation 220.0375)

<sup>6</sup> Of course, if, prior to the transfer, the membership interests in OGS had been transmuted to Connie and Kay's separate property consistent with Family Code 850 through 853, our conclusion would be different.