



STATE OF CALIFORNIA

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February 7, 1989

Re: Change in Ownership

Dear Mr. _____:

In your letter of December 19, 1988 to Mr. James K. McManigal, you requested our opinion as to whether, under the facts presented, the relationship between your client and the co-owner was a partnership or a co-tenancy; and, therefore, whether a change in ownership for property tax purposes occurred when your client purchased the co-owner's interest in the office building enterprise.

In 1980, the co-owners acquired the property for the purpose of operating it as a business enterprise. Title was taken as tenants-in-common with your client holding an undivided 80% interest and the co-owner taking the undivided balance. At that time, the parties entered into a definitive agreement setting forth their various rights and obligations. You attached a copy of the memorandum of the agreement which was recorded in connection with the transaction. The document is entitled "Memorandum of Co-Tenancy Agreement," and in the final paragraph, on page 2, the parties stated the purpose for the agreement is to confirm their mutual understanding with respect to the holding of the "Co-tenant Properties." In the middle paragraph, on page 5, the agreement states:

"The Co-tenant Properties are and shall be held by the Co-tenants as tenants-in-common and not as joint tenants."

"Each Co-tenant expressly disclaims any intention to create a partnership or joint venture with respect to the Co-tenant Properties or on account of their entry into the Co-tenancy Agreement."

*Prop 13-Chg/own
Partner*

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In footnote 1 of your letter, you write that your client received a revenue ruling from the taxing authority in the foreign country (where the client is incorporated); that under the laws of that jurisdiction, the ownership arrangements set forth in the agreement constituted a tenancy-in-common.

In contrast to the documentary evidence, you contend that the substantive terms of the agreement were those typically found in partnership agreements and that many of the terms were specifically contrary to a common law co-tenancy. You note that for purposes of California and United States income taxes, the parties at all times filed tax returns as a partnership. Your footnote also states essentially that by structuring the transaction as a co-tenancy, under the laws of the foreign country, certain favorable tax treatment could be gained. It is your opinion that the relationship that existed between your client and the co-owner was a partnership and that the property was partnership property under California law, notwithstanding that the parties are co-tenants under the different law of a foreign county.

We disagree. By way of the California property recording system, your client has held out to the public that the property is held in co-tenancy. The property and its owners have received the benefits and protection of that system for the past eight years. Evidence Code section 662 provides:

"The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof."

This statute establishes an extremely high standard of proof to impeach the deed granting co-tenancy; but beyond that, you must also impeach a public-recorded document that reaffirms the deed and specifically rejects an intention to create a partnership. None of the authorities you cite address this situation.

Likewise, the fact that the business management of the office buildings does not strictly accord with pure principles of common law tenancy-in-common will not meet the clear and convincing standard. Since such enterprises did not exist at common law, management techniques that are appropriate to the business operation of the specific use of the property are now the rule in this state rather than the exception. Similarly, the fact that your client has filed both state and federal income tax returns as a partnership does not overcome the

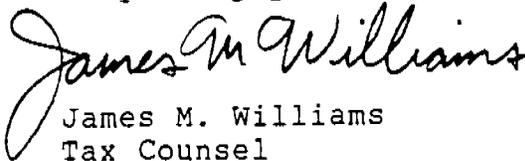
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presumption. The income tax requirements are a function of the business operation and not the manner in which the property is held. Furthermore, income tax returns are confidential and not held out to the public as are recorded documents.

It is our opinion that the relationship that existed between your client and the co-owner was a tenancy-in-common in regard to the ownership of the properties in question. As such, the 20% undivided interest of the co-owner is subject to a reappraisal pursuant to Rule 462 upon acquisition by your client.

Please be advised that the foregoing is the opinion of our staff. The ultimate decision on the change in ownership consequences of this transaction will be made by your local county assessor. He, most likely, will be advised by his county counsel, whose opinion may differ from ours. Feel free to discuss our view with the assessor.

Very truly yours,



James M. Williams
Tax Counsel

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