State of California

Memorandum

220.0502

: Mr. Verne Walton

Date : June 16, 1989

From : Eric F. Eisenlauer

Subject : Applications of Investors

This is in response to your memorandum of May 10, 1989 to Mr. Richard Ochsner in which you request our opinion whether a change in ownership occurred as a result of the transactions described in the First Amendment to Application for Changed Supplemental Assessment and Supporting Memorandum of Points and Authorities filed by applicant Investors, a California Limited Partnership The transactions set forth therein are as follows:

The subject real property ("Parcels") were originally owned by Inc. , which was a wholly owned subsidiary of On June 21, 1985, the shareholders of voted to completely liquidate and dissolve and its subsidiaries in compliance with Internal Revenue Code section 337 (a one-year liquidation) as set forth in written Plan of Complete Liquidation ("Plan"), adopted the same day. At the same time the shareholders approved a written addendum to the Plan ("Addendum"), which includes provisions stating that the Plan would become effective only upon the execution of certain agreements then being negotiated with Inc. (the Agreements)"). The Addendum also provides that the shareholders would form a partnership according to certain specified terms to acquire all interests in real property held by and its subsidiaries. The last of the Agreements was signed on December 3, 1985 at which time the Plan became effective.

Over the following months, Board of Directors ("Board") and their advisers worked to implement the Plan. During this process, several refinements were made to the Plan, including the determination that the Parcels should be distributed, not sold to the partnership and that the partnership should be a limited partnership in order to provide its partners with the limited liability protection they had enjoyed as shareholders. Finally, during a special meeting on June 17, 1986, the Board took all necessary action to formally authorize and approve, among other things, the formal transfer of the parcels to which

actions were ratified by the shareholders later that day. Immediately thereafter, merged into which then formally transferred the parcels to by Corporation Quitclaim Deed dated June 19, 1986. At the same time (June 7, 1989), partners executed an Agreement of Limited Partnership which provided for the sale of general partnership interests representing one percent of the total equity to two newly created corporations and the issuance of limited partnership interests to the shareholders of * A form LP-1, Certificate of Limited partnership was thereafter executed on 20, 1986, and recorded in the California Secretary of State's Office on 7, 1986. On 10, 1986, recorded the deed to the Parcels. Mr. Gary Stange of the Riverside County Assessor's office has provided us with copies of all of the documents referred to above with the exception of the Agreements which are not necessary for purposes of this opinion.

"Change in ownership" is defined by Revenue and Taxation Code** section 60 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."

Except as otherwise provided in section 62, change in ownership, as defined in section 60, 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. (§ 61(i)).

Change in ownership, however, shall not include any transfer between individuals and a legal entity or between legal entities which results solely in a change in the method of holding title to the real property and in which proportional ownership interests whether represented by stock, partnership interest or otherwise, in each and every piece of real property transferred remain the same after the transfer. (§62(a)(2), Property Tax Rule 642(j)(2)(B)).

It is clear under the foregoing provisions that if the Parcels were transferred to the limited partnership by Foods as the deed indicates was the case or by the shareholders of Foods, section 62(a)(2) would not be applicable to exclude the transfer from change in ownership because the proportional ownership interests did not remain the same after the transfer as indicated by Schedule A attached.

*See Schedule A attached which shows ownership interests before and after transfer to

**All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

argues, however, that was originally formed as a general partnership by the shareholders in December 1985; that ownership of the Parcels vested in the shareholders at the time the plan was adopted by operation of law; that the Parcels became partnership property on or before 17, 1986 as a result of being dedicated to partnership purposes; that the parties' interests in the partnership remained unchanged until after the Parcels became partnership property on 17, 1986, when two new corporate general partners acquired interests representing less than one percent of the equity of , and that on 17, 1986, was converted into a limited partnership for business reasons, whereupon formally conveyed title to the parcels to at its shareholders' direction.

thus contends that no change in ownership occurred because (1) at the time the Parcels became partnership property, the equity ownership of and was identical and (2) the subsequent sale of partnership interests to the corporate general partners did not result in a sufficient change in equity ownership to constitute a change in ownership under section 64. is essentially arguing for the application of Property Tax Rule 462(j)(5)(B) which provides that under such circumstances, the addition of partners in a continuing partnership does not constitute a change in ownership of partnership property.

That argument raises the questions of whether a general partnership was ever formed and if so whether such partnership was a continuing partnership.

The existence or nonexistence of a partnership is primarily a question of fact to be determined from facts as established by evidence and inferences to be drawn therefrom. Pearson v. Norton (1964) 230 Cal.App.2d 1. From the material provided, it is not clear to us that a general partnership was in fact established. If not, a change in ownership clearly occurred as indicated above. However, assuming for the sake of argument that a general partnership was created, the question remains whether it was a continuing partnership.

Corporations Code section 15031 provides in relevant part that "[d]issolution [of a partnership] is caused: [¶](7) By . . . admission of a new partner unless otherwise provided in an agreement in writing signed by all of the partners, including . . . any such newly admitted partner, before such . . . admission; provided that in the case of a newly admitted partner he or she may become a party to any such preexisting agreement by signing the same upon such admission."

Under the foregoing provision, any existing general partnership dissolved upon the admission of the corporate general partners

unless one of the specified exceptions is applicable and there is no indication here that an exception applies. Further, it is clear that a limited partnership was created as of the filing of the certificate of limited partnership in the office of the Secretary of State on July 7, 1986 (Corp. Code § 15621(b)).

Under such circumstances, it is our conclusion that there is not a continuing partnership but rather a transfer from the dissolved partnership to a new partnership (in this case a newly formed limited partnership) which constitutes a change in ownership under section 61(i) which is not subject to exclusion under section 62(a)(2) because the proportional ownership interests do not remain the same. (See attached Schedule A and letter from Board counsel James K. McManigal Jr. dated April 20, 1984.)

Accordingly, we are of the opinion that a change in ownership occurred when the Parcels were acquired by the limited partnership regardless of whether a general partnership had been formed by the shareholders or not.

EFE:cb
2007D

Attachments

cc: Mr. John W. Hagerty - w/att.
Mr. Robert H. Gustafson - w/att.