220.0505 **Partnership.** A mother and her three sons are "original co-owners" (Property Tax rule 462(j)(2)(b)) of a partnership's interests. The mother transfers 49 1/2 percent of the interests to several people, none of whom thereby obtain control of the partnership. Two of the sons then wish to have their spouses, who are community property co-owners of the sons' original interests in the partnership, recognized as individual owners of halves of the community interests.

Since the mother did not transfer more than 50 percent of the total partnership interest, no change of ownership occurred. The subsequent recognition of the sons' spouses' interests did not raise the mother's 49 1/2 percent transfer to more than 50 percent. The spouses already owned their interests, which were simply converted from community property to separate property status. C 9/24/90.

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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Executive Director

September 24, 1990

Re: Revised Request for Ruling

Dear

This is in response to your letter of August 3, 1990, in which you advised us that you no longer request a ruling on the matters included in your letters of June 28 and July 6, 1990 and in which you request our opinion whether a "change in ownership" will occur as a result of the following facts and proposed transactions set forth in your letter.

Facts for Assumption

Partnership "X" was created in 1987, by mother ("M"), and her three sons ("S1, S2 and S3"). M, S1, S2 and S3 previously owned as co-tenants all of the properties used to create partnership X. Upon the creation of partnership X, all of the partners received general partnership interests, reflecting the same proportionate ownership interest as their former co-ownership of the underlying properties, as follows:

M	70%
S1	10%
S2	10%
S3	10%

In other words, M, S1, S2 and S3 are the "original co-owners" of partnership X, as that term is defined in Rule 462(J)(2)(B).

All following references to partnership percentages refer to the total partnership, not to a portion of the transferor's interest in the partnership

Subsequent to the creation of partnership X, M has transferred 49 1/2% of the total partnership interest in several transfers, leaving M with a 20 1/2% interest in the partnership. M transferred 4 1/2% to each of her sons S1, S2 and S3. M

transferred 6% to her daughter ("D"). M further transferred 30% to an unrelated third party ("TP"). As a result of these transfers, partnership X is now owned as follows:

Partner	Percentage
M	20 1/2%
S1	14 1/2%
S2	14 1/2%
S3	14 1/2%
D	6 %
TP*	30 %

We are to further assume that the totality of these transfers since the creation of the partnership, has not exceeded more than 50% of the total control or ownership interests.

For the purposes of this ruling request, we are to assume that the following partnership interests of S1, S2, S3 and D are owned between them and their spouses as follows:

Partner	Community Property	Separate Property	Total
S1	10%	4.5%	14.5%
S2	10%	4.5%	14.5%
S3	10%	4.5%	14.5%
D	0%	6 %	6 %

With respect to the 10% interest, we are to further assume that S1, S2 and S3 and their spouses have always owned these interests as community property. None of the spouses has ever been an actual member of partnership X. Their names are not listed on the Partnership Agreement or Statement of Partnership. Each spouse receives the usual economic benefit associated with her community property interest in the partnership. However, none of the spouses is presently entitled to interfere in the business of the partnership, or to cast any vote with respect to the management or control of the partnership.

Under the terms of the Partnership Agreement, S1, S2 and S3 are the managing partners, and may not be removed in the absence of death or disability, even by a majority vote. Any new partner is required to accept this condition in order to be admitted to the partnership.

Proposed Transaction

S1 wishes to formally recognize the community property portion of his total partnership interest, by adding his wife as a partner to the extent of that interest (5%). S2 is presently going through a divorce, and as a possible property settlement for that divorce, wishes to transfer the community property portion of her interest (5%) to his ex-wife outright. All of the partners wish to admit both the spouse of S1 and the ex-wife of S2 as a partner in partnership X, to the extent of their existing community property interest.

Each spouse has the equivalent of a 5% interest in the profits, capital and distributions.

With respect to the spouse of S1, this transfer could be accomplished by simply amending the Partnership Agreement to reflect the fact that S1 and his spouse own the 10% partnership interest, as community property.

With respect to S2 and his ex-spouse, because of the divorce, it would not be appropriate to merely indicate the former spouse's community property interest in the 10% share. Instead, it will be necessary to formally reflect her interest in a 5% share of the partnership, which represents her community property interest in the original 10% share. The ex-spouse of S2 will receive a separate 5% partner interest without reference to her former husband. Her 5% share will be her separate property.

You have asked whether the proposed transfers will constitute a "change of ownership" for purposes of section 61 of the Revenue and Taxation Code* or whether these transfers will be excluded under sections 62 and 63.

Law and Analysis

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."

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

Section 64 provides in relevant part:

> "(a) Except as provided in subdivision (h) of Section 61 and subdivision (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.
>
> * * * "
>
> "(d) 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 co-owners." 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 co-owners 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.
>
> The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50 percent of the interests in the entity.
>
> * * * "

Neither subdivision (h) of section 61 nor subdivision (c) of section 64 are applicable to the facts of this case. Thus, whether the proposed transactions will constitute a "change in ownership" of the real property of partnership X depends upon whether such transactions would result in "ownership interests representing cumulatively more than 50 percent of the total interests in the entity * * * [being] transferred by any of the original coowners in one or more transactions * * * " within the meaning of section 64(d). The reference in section 64(d) to transfers of "ownership interests" means just that. In order to be considered a transfer for purposes of the 50 percent cumulative total limit imposed under section 64(d),

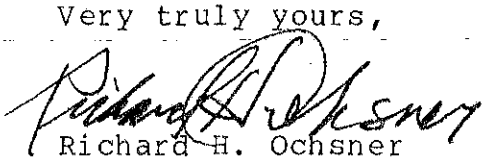
there must, in fact, be a transfer of an ownership interest. A paper transfer which merely recognizes a preexisting ownership interest is not, in substance, a transfer of an ownership interest and should not be treated as such for purposes of section 64(d).

Based upon the information provided, we assume without deciding that the spouses of S1 and S2, as a matter of community property law, each had a 5% ownership interest in the partnership. Although not stated in your letter, the implication is that the spouses held their 5% community property ownership interests since the transfer of the property to the partnership and, therefore, the spouses should be considered to be "original coowners" as that term is defined in section 64(d). Since the spouses already have the 5% ownership interests in the partnership, it would appear that the proposed transactions merely formalize that ownership interest but do not constitute a transfer of an ownership interest within the meaning of section 64(d). We conclude, therefore, that the proposed transaction would not constitute a change in ownership. In light of this conclusion, we do not address the applicability of section 63 concerning interspousal transfers.

You have also requested our advice as to how, if at all, to complete the Statement of Change in Control and Ownership of Legal Entities: Form PT-100B. We suggest that you complete the change in ownership statement and respond to the questions in accordance with the views expressed above. We also recommend that you provide a complete explanation of the transaction. You may include a copy of this letter.

The views expressed herein are advisory only and are not binding upon any county assessor. You may wish to consult the assessor of the county in which the property we have been discussing is located in order to determine whether the assessor will treat the transaction in a manner consistent with the views expressed above.

Very truly yours,



Richard H. Ochsner
Assistant Chief Counsel

RHO:sp
2619D

cc: Mr. John Hagerty
Mr. Verne Walton
Mr. Eric Eisenlauer