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Executive Director

January 17, 2005

Re: **Change in Ownership Exclusion – Section 62, Subdivision (a)(2)
Proportional Transfers of Partnership Interests.**

Dear Mr. :

This is in reply to your July 28, 2005 letter to Selvi Stanislaus, Acting Assistant Chief Counsel, requesting a legal opinion on whether certain transfers of partnership interests result in a change in ownership of real property owned by the partnership.

Factual Background

The following summarizes the information you provided regarding the property owned by the partnership:

1. The partnership was established prior to 1967, by revocable living Trust A, Peter, Kristy, Robert and Richard. Widow (W) was the present beneficiary and trustee of Trust A. The partnership purchased the subject property in 1967 with the partnership interests held as follows: Trust A, 50 percent; Peter, 25 percent; Kristy, 15 percent; Robert, 5 percent; and Richard, 5 percent.
2. In 1969, Peter transferred one half of his 25 percent interest in the partnership (12.5 percent) to Trust A and the other half (12.5 percent) to Robert. This resulted in partnership interests being held as follows: Trust A, 62.5 percent; Robert, 17.5 percent; Kristy, 15 percent and Richard, 5 percent.
3. In an unknown year after 1969, Richard transferred his 5 percent interest to Robert which resulted in the partnership interests being held as follows: Trust A, 62.5 percent; Robert, 22.5 percent; and Kristy, 15 percent.
4. From the time Trust A was established until her death in 1989, W was the trustee and present beneficiary of Trust A. Upon the death of W, the Trust A instructions directed the successor trustee to distribute W's 62.5 percent interest in the partnership, in equal shares, to Son (S) and Daughter (D).

However, the distribution was delayed for reasons unrelated to property tax issues. Now, the trust is ready to make the distributions and you wish to confirm that the distributions will not result in a reassessment of the property.

Law and Analysis

Initially, we note that the partnership was formed prior to 1967, the real property was purchased by the partnership in 1967, and that Trust A acquired a controlling interest in the real property in 1969. All of these acts occurred prior to the passage of Proposition 13 in 1977, which enacted the current property assessment scheme and the resulting statutory change in ownership provisions. These transactions also occurred prior to the enactment of Revenue and Taxation Code section¹ 64 in 1979, which governs the change in ownership consequences of transfers of property between individuals and legal entities. Therefore, the transactions that occurred prior to 1979 were not subject to the current change in ownership rules. As a result, we will address the transfers that occurred prior to 1979 without considering the aforementioned provisions. We will then address the transfers that occurred subsequent to 1979 and the impact of section 64, if any, on them.

A change in ownership is defined 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. (Rev. & Tax. Code, § 60.) A change in ownership does not include transfers into trusts where the trustor or trustor's spouse is the present beneficiary of the trust, or where the trust is revocable. (Rev. & Tax. Code, § 62, subd. (d); see Property Tax Annotation 220.0384.) Because revocable living trusts are not treated as separate legal entities for property tax purposes (i.e., we "look through" the trust), the trustor of a living trust is regarded as the owner of real property or legal entity interests held by the trust. (Property Tax Rule² 462.160.) Thus, transfers between a living trust and a legal entity, or transfers of legal entity interest to or from a living trust, are excluded from a change in ownership as long as the trustor's beneficial ownership interests are the same before and after the transfer. (See Property Tax Annotation 220.0375.020.) However, a change in ownership includes the transfer of any interests in real property that vests in a person other than the trustor when a revocable trust becomes irrevocable, unless another exclusion applies (e.g., parent-child exclusion or interspousal exclusion). (Rev. & Tax. Code, § 61, subd. (h).)

Transfers of interests in legal entities generally do not constitute a change in ownership of real property owned by the legal entities. (Rev. & Tax. Code, § 64, subd. (a).) However, when any person or entity obtains direct or indirect control of a legal entity (defined as ownership or control of more than 50 percent of stock or other ownership interests), a change in ownership of the real property occurs. (Rev. & Tax. Code, § 64, subd. (c)(1).)

- 1. The partnership was established prior to 1967 between revocable living Trust A, Peter, Kristy, Robert and Richard. Widow (W) was the present beneficiary and trustee of Trust A. The partnership purchased the subject property in 1967 with the partnership interests held as follows: Trust A, 50 percent; Peter, 25 percent; Kristy, 15 percent; Robert, 5 percent; and Richard, 5 percent.**

Because the property was purchased by the partnership at the outset, prior to 1969, there was no change in ownership consequences.

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

²All references to Property Tax Rules are references to California Code of Regulations, title 18.

- 2. In 1969, Peter transferred 12.5 percent interest to Trust A and 12.5 percent interest to Robert. This resulted in partnership interests being held as follows: Trust A, 62.5 percent; Robert, 17.5 percent; Kristy, 15 percent; and Richard, 5 percent.**

This 1969 transfer resulted in Trust A holding more than 50 percent of the total interests in the partnership. Under the current section 64, subdivision (c)(1), this would have resulted in a change in ownership of the entire property. Section 64, however, was not enacted until July 10, 1979 and is, therefore, inapplicable to this transfer of partnership interest. Thus, this transfer did not result in a change in ownership of the property owned by the partnership.

- 3. Richard transferred his 5 percent interest to Robert which resulted in partnership interests being held as follows: Trust A, 62.5 percent; Robert, 22.5 percent; and Kristy, 15 percent.**

You indicated in our telephone conversation, subsequent to your letter, that neither you nor your client could document the year the transfer from Richard to Robert occurred. However, you indicated that the transfer did occur after 1979. Therefore, section 64 applies to this transfer of partnership interest. The purchase or transfer of ownership interests in legal entities such as partnerships does constitute a transfer of the real property owned by the legal entity, unless the transfer results in another person obtaining control of more than 50 percent of the total interest in the partnership capital and profits. (Rev. & Tax. Code, § 64, subs. (a) and (c)(1); Property Tax Rule 462.180, subd. (d)(1)(B).) Thus, Richard's transfer of his 5 percent interest to Robert does not result in a change in ownership of the property because no one person or entity acquired a majority interest in the partnership as a result of the transfer.

- 4. From the time Trust A was established until her death in 1989, W was the trustee and present beneficiary of Trust A. Upon the death of W, the Trust A instructions directed the successor trustee to distribute W's 62.5 percent interest in the partnership, in equal shares, to Son (S) and Daughter (D)**

Trust A has held a majority 62.5 percent partnership interest since 1969. In 1989, upon the death of W, Trust A should have transferred a 31.25 percent partnership interest to S and 31.25 percent partnership interest to D, according to the trust instructions. The resulting ownership of the partnership would have been as follows: S, 31.25 percent; D, 31.25 percent; Kristy, 15 percent; and Robert, 22.5 percent.

Pursuant to subdivision (a) of section 64, the transfer of Trust A's partnership interests to S and D would not result in a change in ownership of the real property owned by the partnership, unless the transfer results in any other individual or legal entity holding more than 50 percent of the total ownership interests in the partnership. In this case, no change in ownership results because the transfer does not result in any individual or legal entity holding more than 50 percent of the partnership interests. The fact that these transfers were not done in 1989 but will now occur in 2005 does not affect whether or not a change in ownership of the property will occur.

The views expressed in this letter are advisory in nature only; 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.

Mr.

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January 17, 2005

Very truly yours,

/s/ Dana Flanagan-McBeth

Dana Flanagan-McBeth
Tax Counsel

DF/eb

cc: Honorable
County Assessor

Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Paul Lane, MIC:64
Mr. Todd Gilman, MIC:70
Ms. Selvi Stanislaus, MIC:82