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January 22, 2002

Re: Change in Ownership -- Mergers With or Without Original Coowners

Dear Mr. :

Your letter of November 14, 2001 to Assistant Chief Counsel Larry Augusta was assigned to me for response. You requested a "ruling" on whether a merger of general partnerships and transfer of their assets would result in a change of ownership of the property for reassessment purposes. Although we do not issue "rulings" as such, we are happy to provide you with a staff opinion. We conclude that there would be no change in ownership in the scenario you described, for the following reasons:

> The factual transaction you propose involves two California general partnerships that each own California real property and that are both owned in identical proportions by the same members of a single family who are also the present beneficiaries of the family trust.[1] The family seeks to "consolidate" the two entities by (1) transferring the partnership interests from Partnership D to Partnership P in exchange for additional partnership interests in P, and (2) dissolving Partnership D and distributing all of its assets to Partnership P. [2]

Statutory Merger or Conversion

Because the transaction you describe appears to constitute a statutory partnership conversion or merger as defined by Corporation Code §16909 or 16914, there is no change in ownership because there is no "transfer" of the property. (See Property Tax Rule 462.180(d)(4).[3])

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[1] We assume for purposes of this analysis that the family trust has the same present beneficiaries both before and after the transaction.

[2] Your alternative request is mooted by our conclusion that there is no change in ownership in your original proposed scenario. However, you will note that the alternative schedule of distributions would result in the same conclusion if the distributions are all made in the same proportions.

[3] Rule 462.180(d)(4) gives two examples of statutory mergers and conversions that are excluded from change in ownership reassessment on the basis of the fact that there is simply no "transfer" of assets "when the law of the jurisdiction of the converted or surviving entity provides that such entity remains the same entity or succeeds to the assets of the converting or disappearing entity without other act or transfer and the partners or members of the disappearing entity maintain the same ownership interest in profits and capital of the converted or surviving entity that they held in the converting or disappearing entity. This applies equally to conversion and mergers of general partnerships under Corporations Code §§16909 and 16914, mergers of limited partnerships under Corporations Code §15678.6, subdivision (a), and mergers of limited liability companies under Corporations Code §17554.

If, for some reason, the statutory conversion or merger provisions in §§16909 or 16914 do not apply to the conversion or merger of these partnerships, the transfer of the family members' partnership interests and the partnership property to the surviving partnership, would result in a change in ownership, unless excluded by Section 62, subdivision (a)(2) and Section 64, subdivision (a). We find both exclusions apply to the proposed transaction.

Exclusion under Section 62, subdivision (a)(2)

Section 62, subdivision (a)(2) excludes from change in ownership, "any transfer [of property] between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, that results solely in a change in the method of holding title to the real property, and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer…"

Since both the partnership interests and the property will be transferred directly from Partnership D to Partnership P and the same partners will retain the same ownership interests in the property before and after the transfer, the result is no change in the proportional interests and the transfer would be excluded from change in ownership under section 62, subdivision (a)(2).

Exclusion under Section 64, subdivision (a)

With regard to the transfer of the family members' *partnership interests* from the first to the second partnership, Revenue and Taxation Code section 64, subdivision (a), provides that "…the purchase or transfer of ownership interests in legal entities, such as partnership…interests, shall not be deemed to constitute a transfer of the real property of the legal entity"[4] except as provided in subdivision (c), relating to change in control, or (d), relating to transfers by "original coowners". A change in control of the owning entity under subdivision (c) results from one individual or entity's acquisition of a majority (more that 50%) ownership interest. (Section 64, subdivision (c)(1).) A change in ownership under Section 64, subdivision (d) occurs when "original coowners" cumulatively transfer more than 50% of the total partnership interests. Because your clients propose to retain the same proportional interests in the merged entity as they held in the original partnerships, there will be no disqualifying change in control under subdivision (c). Neither will there be a disqualifying change under section 64, subdivision (d) because, even if the current partners in Partnership D are "original coowners" (by virtue of having previously used the section 62, subdivision (a)(2) exclusion to transfer the property into Partnership D), subsequent proportional transfers "shall not be accumulated or counted to determine a change in ownership." Rather, they too are excluded under Section 62, subdivision (a)(2). (Rule 462.180(d)(2) states in pertinent part, "For purposes of subdivision (d)(2)…proportional transfers excluded under Section 62(a)(2) of the Revenue and Taxation Code shall not be cumulated or counted to determine a change in ownership.")

[4] This exclusion is specifically applicable to transfers of interests in dissolving partnerships. (Section 64, subdiv. (a))

Original Coowners

Although no immediate "change in ownership" and reassessment would result from either a statutory or non-statutory conversion or merger, whether a future change in ownership would result from subsequent transfers of ownership interests in the surviving partnership would depend on whether the conversion or merger complied with, respectively, Corporations Code section 16909 or 16914.

A *nonstatutory* conversion or merger would require application of the section 62, subdivision (a)(2) exclusion to the transfer of the property, which in turn would subject the transferees to the status of "original coowners" under section 64, subdivision (d).[5] That section provides that change in ownership of the property occurs upon the subsequent cumulative transfer of more than 50% of the original coowners' partnership interests, as explained above.

If the conversion or merger is *statutory*, however, there is no "original coowner" problem. (See Rule 462.180(d)(4).) Because there is no "transfer" of the property from one partnership to the other, there is no need to apply the exclusion of section 62, subdivision (a)(2), the triggering event for the application of section 64 subdivision (d), and there is therefore no "original coowner" designation. For change in ownership purposes, subsequent transfers of partnership interests would be treated as if the prior transaction had not occurred.

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

Sincerely,

/s/ Susan Scott

Susan Scott
Tax Counsel

Attachment – Property Tax Rule 462.180 (d)(4)

SAS:eb
Prop/precdent/coowners/02/03sas.doc

cc: David Gau, MIC:63
Chief of PPSD, MIC:64
Mr. Harold Hale, MIC:61
Jennifer Willis, MIC:70

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[5] Section 64, subdivision (d) provides, in pertinent part:

If a property is transferred…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 the legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests representing cumulatively more than 50% of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under the provision of paragraph 2) of subdivision (a) of Section 62 shall be reappraised.