State of California

Memorandum

To : Mr. Verne Walton

Date : July 28, 1989

From : Eric F. Eisenlauer

Subject : Correspondence of San Diego County Assessor

In your memorandum of June 29, 1989, to Mr. [illegible] you requested our analysis of a trust agreement submitted for review by the San Diego County Assessor.

The trustors, husband and wife, transferred real and personal property into a revocable trust in 1973. The trust provided that on the death of the first spouse the trust estate was to be divided into two trusts, Trust A and Trust B. Trust A was to contain the surviving spouse's interest in community property and any separate property included in the trust estate as well as amounts necessary to equal the maximum marital deduction for federal estate tax purposes. Trust B was to contain the remainder of the trust estate. The trust provided that on the death of the first spouse the entire net income from both Trusts A and B was to be paid to the surviving spouse. In addition, principal payments could be paid to the surviving spouse in the discretion of the trustee. The trust gave the surviving spouse a testamentary power of appointment over Trust A as well as the power to revoke Trust A but not Trust B during the lifetime of the surviving spouse.

Upon the death of the surviving spouse, Trust A, to the extent not appointed by the surviving spouse was to be added to Trust B and administered thereunder. The trust provided that after the death of the surviving spouse the entire net income of Trust B was to be paid to or applied for the benefit of trustors' son during his lifetime. In addition, principal payments could be made to trustors' son in the discretion of the trustee. On the death of trustors' son, the balance of Trust B is to be distributed to the issue of trustors' son.

Under the terms of the trust, the trustors' son became a co-trustee after the death of his father in 1974 and the sole trustee after the death of his mother in 1981. The Assessor asks whether a change in ownership occurred when the surviving spouse (the mother of the current trust beneficiary) died in 1981.

"Change in ownership" is defined by Revenue and Taxation Code (all statutory references are to the Revenue and Taxation Code unless otherwise specified) 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."

Section 61 provides in relevant part that "[e]xcept as otherwise provided in Section 62, change in ownership, as defined in Section 60, includes, but is not limited to:

* * *

> " (f) Any vesting of the right to possession or enjoyment of a remainder . . . interest which occurs upon the termination of a life estate or other similar precedent property interest, except as provided in subdivision (d) of Section 62 . . . .
>
> " (g) Any interests in real property which vest in persons other than the trustor . . . when a revocable trust becomes irrevocable."

Section 62(d) excludes from change in ownership "[a]ny transfer by the trustor, or by the trustor's spouse, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust or (2) the trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; or, any creation or termination of a trust in which the interest of others does not exceed 12 years duration."

The Board has interpreted the foregoing provisions in 18 Cal. Code Reg. § 462 ("Rule 462") which provides in relevant part:

(a) GENERAL.

* * *

> (2) A "change in ownership" in real property occurs when there is a transfer of a present interest in the property, and a transfer of the right to beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Every transfer of property qualified as a "change in ownership" shall be so regarded whether the transfer is voluntary, involuntary, by operation of law, by grant, gift, devise, inheritance, trust, contract of sale, addition or deletion of an owner, property settlement (except as provided in (1) (3) for interspousal transfers), or any other means. A change in the name of an owner of property not involving a change in the right to beneficial use is excluded from the term "transfer" as used in this section.

* * *

(d) LIFE ESTATES AND ESTATES FOR YEARS.

(1) Life estates. The creation of a life estate in real property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor's spouse. However, the subsequent transfer of such a life estate by the transferor or the transferor's spouse to a third party is a change in ownership. Upon termination of such a reserved life estate, the vesting of a right to possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership.

* * *

(i) TRUSTS.

(1) Creation. Except as is otherwise provided in subdivision (2) the transfer by the trustor, or any other person, of real property into a trust is a change in ownership of such property at the time of the transfer.

(2) Exceptions. A transfer to a trust is not a change in ownership upon the creation of or transfer to a trust if:

(A) Trustor-Transferor Beneficiary Trusts. The trustor-transferor is the sole present beneficiary of the trust; provided, however, a change in ownership of trust property does occur to the extent that persons other than the trustor-transferor are present beneficiaries of the trust.

(B) Revocable Trusts. The transfer of real property or an ownership interest(s) in a legal entity by the trustor(s) to a trust which is revocable by the trustor(s); provided, however, a change in ownership does occur at the time the revocable trust becomes irrevocable unless the trustor-transferor remains or becomes the sole present beneficiary.

(C) Trustor Reversion Trusts. The trustor-transferor retains the reversion, and the beneficial interest(s) of person(s) other than the trustor-transferor does not exceed 12 years in duration.

(D) Interspousal Trusts. The exemption afforded interspousal transfers is applicable; provided, however, a change in ownership of trust property does occur to the extent

that persons other than the trustor-transferor's spouse are beneficiaries of the trust.

(E) Proportional Interests. The transfer is to a trust which results in the proportional interests of the beneficiaries in the property remaining the same before and after the transfer.

(F) Other Trusts. The transfer is from one trust to another and meets the requirements of (A), (B), (C), (D), or (E).

(3) Termination. Except as is otherwise provided in subdivision (4), the termination of a trust, or portion thereof, constitutes a change in ownership at the time of the termination of the trust.

(4) Exceptions. A transfer resulting from the termination of a trust is not a change in ownership if:

(A) Prior Reappraisal. Termination results in the distribution of trust property according to the terms of the trust to a person or entity who received a present interest (either use of or income from the property) causing a reappraisal when the trust was created or when it became irrevocable; provided, however, another change in ownership also occurs when the remainder or reversionary interest becomes possessory if the holder of that interest is a person or entity other than the present beneficiary.

(B) Revocable Trusts. Termination results from the trustor-transferor's exercise of the power of revocation and the property is transferred by the trustee back to the trustor-transferor.

(C) Trustor Reversion Trusts. The trust term did not exceed 12 years in duration and, on termination, the property reverts to the trustor-transferor.

(D) Interspousal Trusts. The exemption afforded interspousal transfers is applicable.

(E) Proportional Interests. Termination results in the transfer to the beneficiaries who receive the same proportional interests in the property as they held before the termination of the trust.

(F) Other Trusts. Termination results in the transfer from one trust to another and meets the requirements of (A), (B), (C), (D), or (E) of subdivision (2).

Although Rule 462(i) addresses only the creation and termination of trusts and not specifically the situation where beneficial interests change during the term of a trust, Rule 462(a)(2) states that "[e]very transfer of property qualified as a 'change in ownership' shall be so regarded whether the transfer is . . . by . . . trust . . . or any other means. Thus, we don't believe the failure of Rule 462(i) to address cases such as this precludes a determination that a change in ownership has occurred.

The foregoing provisions make it clear that creating a life estate in real property in trust or otherwise in a person other than the transferor, his or her spouse (and since Prop. 58, his or her child or parent) is a change in ownership. The rationale for this position is that there has been a transfer of a present beneficial interest in real property which is substantially equal to the value of the fee interest.

The foregoing provisions also make it clear that, subject to exceptions not here relevant, a change in ownership occurs when a life estate (in trust or otherwise) terminates and the property vests in possession or enjoyment in the remainderman. The question here is whether the term "remainder" as used in section 61(f) includes an income interest in a trust. It is clear that section 61(f) is intended to apply to trusts because of its reference to section 62(d) which applies only to trusts. The term "remainder," however, is not defined for property tax purposes. We therefore assume that the definitions found in the Civil Code are applicable. Civil Code section 769 provides that "[w]hen a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name." "A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time or otherwise, of a precedent estate created at the same time." (Civ. Code § 767.) Estates in real property include life estates as well as estates in fee simple (Civ. Code § 761).

Accordingly, we are of the opinion that the income interest in trust which vested in possession or enjoyment on the death of the surviving spouse in this matter reasonably can be characterized as a "remainder" within the meaning of section 61(f). Moreover, there is no distinction under the property tax provisions quoted above between an income interest for life and a present fee simple interest. The transfer of either is a change in ownership. We therefore conclude that a change in ownership occurred under section 61(f) on the death of the surviving spouse in 1981. Furthermore, since Trust A became irrevocable and terminated on the death of the surviving spouse in 1981, there are additional

grounds for concluding that a change in ownership occurred with respect to real property held in Trust A under section 61(g) and Rule 462(i)(3).

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cc: Mr. John W. Hagerty

STATE OF CALIFORNIA

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E. L. SORENSEN, JR.
Executive Director

January 20, 2000

In Re: ***Change in Ownership – Death of a Partner; Transfer to Co-Trustee Spouse; Power of Appointment; Partnership Interest Transfers - Sections 64(c)(2) and 64(a).***

Dear Mr. :

This is in response to your letter of November 4, 1999, requesting our opinion concerning the application of various change in ownership exclusions under the Revenue and Taxation Code and the property tax rules to the following fact pattern:

1. Husband and Wife created a revocable living trust ("HW Revocable Trust") into which they may contribute both community and separate property. The only property currently in the Trust is Husband's separate property, which constitutes his majority interest (hereinafter 70%) in HT Partnership and his minority interest (hereinafter 30%) in TH Partnership. An unrelated third party, X, owns the remaining 30% interest in HT Partnership and X owns the 70% interest in TH Partnership. Both partnerships own California income producing real property.

2. Both Husband and Wife are trustees and may revoke the Trust with respect to any community property and with respect to their respective separate property. Currently, the only trust assets are Husband's separate property; therefore, Husband is the sole trustee and Wife becomes co-trustee upon Husband's death.

3. Upon the death of the first spouse, the trust becomes irrevocable as to the interests and contributions made by that spouse. The trust estate will fund a successor trust that will qualify as a QTIP (with an unlimited marital deduction) for federal estate tax purposes for the benefit of the surviving spouse. The surviving spouse is entitled all of the trust income for life; however, the trustee (Wife) may invade the principal to provide for the proper health, support, maintenance, and education of the surviving spouse and her dependents (children and grandchildren).

4. Upon the death of the surviving spouse, the principal of the trust goes to the children and grandchildren.

5. For estate planning purposes, we are to assume that Husband is the first spouse to die and that under the trust, his 70% in HT Partnership and his 30% interest in TH Partnership both transfer to Wife on the date of his death, and that the trustee will be Wife.

Your questions are as follows: 1) Does trustee's (Wife's) acquisition of Husband's 70% interest in HT Partnership and his 30% interest in TH Partnership result in a change in ownership of the partnerships' real property? 2) Does Wife's power to invade the trust (including income from the partnerships) for the benefit of herself, her children and grandchildren alter the result and cause a change in ownership of the partnership property? 3) Would the trustee's subsequent purchase of the 30% minority interest in HT Partnership result in a change in ownership of the partnership property? and 4) Would a change in ownership occur if, as an alternative, Wife simultaneously causes the Trust to acquire X's remaining 30% Interest in HT Partnership and to sell to a third party its 30% Interest in TH Partnership, assuming the values of interests transferred were equal? For the reasons hereinafter explained, the answer to question 1 is yes, but an exclusion applies; and the answers to questions 2, 3 and 4 are no.

1. Change in Ownership of HT Partnership's Real Property occurs when Husband's 70% Partnership Interests Transfer to Wife/Beneficiary – but Interspousal Exclusion Applies.

Wife Will Be the Present Beneficiary

Under change in ownership law, transfers of interests in real property, including transfers of interests in legal entities holding real property, occur upon the date a revocable trust becomes irrevocable, which is the date of death of the trustor/settlor of a revocable trust. Property Tax Rule 462.260(d)(1) states that the date of change in ownership of real property in a revocable trust is as follows: "Revocable. The date the trust becomes irrevocable. Example 1: A creates an inter vivos revocable trust that becomes irrevocable upon A's death. The date of change in ownership is the date of A's death."

In the instant case, the Wife is both the spouse of the trustor and the named lifetime beneficiary, and therefore will be considered the owner of the trust property upon Husband's death. This is true whether she has a life estate in the real property in the trust, or merely a lifetime interest in all of the income from the property in the trust, that is, a life interest in the partnership's income. (Annotated Letter No. 220.0780, Eisenlauer 7/28/89, attached). The fact that Wife is the trustee is not relevant in this regard, since the trustee is never considered the owner, even though the trustee has legal title and authority to sell the trust property.[1]

[1] Under well established trust principles, if the trustor retains the power of revocation and/or is the sole present income beneficiary, the interest he retains is considered "substantially equivalent in value" to the fee. On the other hand, once the power of revocation ceases, the interests of the trust beneficiaries "vest" (transfer), and their interests are considered "substantially equivalent in value" to the fee (See Report of the Task Force on Property Tax Administration to Assembly Revenue and Taxation Committee, January 22, 1979, p.43.)

Interspousal Exclusion Applicable to Legal Entity Interest Transfers in Trust

Where the sole present beneficiary is the surviving spouse, the transfer of the trust property upon the trustor's death to his spouse is excluded from change in ownership under Section 62(d).[2] This provision is interpreted by Rule 462.160 (b)(3) which states that if the transfer is one to which the interspousal exclusion applies, i.e., a transfer from Husband to Wife on the death of Husband, the transfer is excluded from change in ownership, - except to the extent that persons other than the trustor-transferor's spouse are or become the present beneficiaries.

As to the applicability of this exclusion in situations where the "property" transferred constitutes interests in partnerships or other legal entities, Rule 462.160 (b)(1(C) states that the following transfers of legal entity interests are excluded from change in ownership:

> "(C) Irrevocable Trusts Holding Interests in Legal Entities. The transfer of an ownership interest in a legal entity holding an interest in real property by the trustor into a trust in which the trustor-transferor is the sole present beneficiary, or to a trust in which the trustor-transferor retains the reversion as defined in subdivision (b)(1)(B) of this rule. However, a change in ownership of the real property held by the legal entity does occur if Revenue and Taxation Code section 61(i), 64(c) or 64(d) applies, because the change in ownership laws governing interests in legal entities are applicable regardless of whether such interests are held by a trust."

Here, Husband's death will result in a transfer to Wife of 70% of the interests in HT Partnership and 30% of the interests in TH Partnership. Apart from the application of the interspousal exclusion to the 70% transfer, there would be a change in control of HT Partnership under Section 64(c). As you noted however, Rule 462.220 specifically provides that the interspousal exclusion applies to the transfer of any legal entity interests between spouses. Thus, subdivision (b) of Rule 462.220 prohibits a change in control from Husband to Wife under Section 64(c), and subdivision (c) thereof prohibits a change in ownership if Husband were an "original coowner" under Section 64(d).

As to a change in control, these circumstances fit squarely within Example 1 under subdivision (b) of Rule 462.220. Subdivision (b) states that a change in control as defined in Section 64(c) does not include transfers of interests in legal entities by one spouse which results in the other spouse's obtaining control. To illustrate, Example 1 provides:

> "Example 1: Husband (H) owns a 30 percent interest in a partnership and wife (W) owns a 30 percent ownership interest in the same partnership. W transfers her interest to H; H now owns a 60 percent interest. There is no change in ownership."

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[2] Section 62(d) states in relevant part that a change in ownership shall not include: "(d) Any transfer by the trustor, or by the trustors' spouse, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust."

Based on the foregoing, even though Wife had a 0% interest in HT Partnership before Husband's death and will acquire a 70% interest at the time of his death, there is no change in control of HT Partnership because the transfer is between spouses, and therefore excluded. The fact that Husband's partnership interests were solely his separate property rather than community property does not change this result. There are no limitations in Rule 462.220 that would preclude the application of Example 1 to interspousal transfers involving the spouses' separate properties.[3]

Alternatively, if Husband and X were classified as "original coowners" (because they used the exclusions in Section 62(a)(2) initially to make proportionate interest transfers of property into HT Partnership), subdivision (c) of Rule 462.220 precludes Husband's transfer to Wife of 70% of his partnership interests from causing a change in ownership under Section 64(d).[4] Under subdivision (c) of the rule, interspousal transfers of ownership interests in legal entities by "original coowners" are <u>not to be counted</u> for purposes of Section 64(d). See Example 2 of Rule 462.220 (c).[5] Accordingly, even if Husband's death caused the transfer of 70% of the "original coowner" interests in HT Partnership to Wife (facts do not state), a change in ownership under Section 64(d) would be excluded as an interspousal transfer. The fact that Husband's partnership interests were solely his separate property does not change this result. There are no limitations in Rule 462.220 that would preclude the application of Example 2 to interspousal transfers involving the spouses' separate properties.

2. <u>Power of appointment for the benefit of Wife, children and grandchildren does not alter the result and cause a change in ownership of the partnership property.</u>

As a general rule, the trustee's power to invade the trust, (including the income derived from the partnership interests) for the benefit of the surviving spouse *and others*, does <u>not</u> effect the determination that the surviving spouse is the sole beneficiary or impact the change in ownership consequences. Where invasion rights are given to a trustee, who is also the surviving

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[3] Separate, rather than community property is an issue, and the interspousal exclusion does not apply where, as in Annotated Letter No. 220.0274, Ochsner 3/27/87, attached, the transfer is by Husband of his separate property to a partnership in which Husband has a 95% interest and Wife has a 5% interest – because the transfer is not between spouses, but between Husband and a partnership.

[4] (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 that legal entity immediately after the transfer shall be considered the "original coowners." 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 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 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.

A transfer of shares or other ownership interests that results in a change in control of a corporation, partnership, limited liability company, or any other legal entity is subject to reappraisal as provided in subdivision (c) rather than this subdivision.

[5] Example 2: Spouses H and W are ''original coowners'' of a partnership; each originally owned a 50 percent partnership interest. They have previously each transferred a 10 percent interest to X and to Y, leaving H and W each with a 30 percent partnership interest. W transfers a 15 percent interest to H. Although cumulatively more than 50 percent has been transferred, there is no change in ownership.

spouse, of a QTIP trust for the benefit of herself and others, but the surviving spouse is entitled to all of the trust property or income for her lifetime, she is still considered the sole present beneficiary. No one else but the surviving spouse is entitled to receive any property or income from the trust. The beneficiary is always considered the owner, despite a power of appointment given to a trustee (or donee), since the trustee's power is discretionary. The fact that "others," e.g., the children and grandchildren, may receive distributions if the trustee chooses to exercise the power, is a mere expectancy. Thus, the interests created by powers of appointment have been characterized as *future* interests, as opposed to *present* interests, because the exercise of the discretion of the trustee is a barrier to the others' present enjoyment of the trust principal. (Annotated Letter No. 220.0775, Eisenlauer 6/16/95, attached.) Based on the facts submitted, there is no transfer of present beneficial interests in the Trust's partnership interests to the children or grandchildren through the power of appointment, and therefore, no transfer of any partnership interests to the children or grandchildren, until the *present* beneficiary, the surviving spouse, dies.

In certain cases, it is important to determine whether the power of appointment is *general* or *special*[6] in that it affects the amount of the $1 million parent child exclusion available from each parent after the surviving spouse dies. For example, where there is a *general* power of appointment in the surviving spouse, the property is treated for property tax purposes as being transferred from the deceased spouse to the surviving spouse. For purposes of determining the amount of the parent/child exclusion available at the surviving spouse's death, the exclusion from the predeceased spouse may be reduced since the property is deemed to be transferred from the surviving spouse. In the instant case, the power of appointment in the surviving spouse (Wife) appears to be *special* (limited to an ascertainable standard), so that transfers from the Husband would be treated as his, for purposes of the $1 million exclusion, upon the death of the Wife. Unfortunately, since the interests transferred to the children would be partnership interests, the parent/child exclusion would not apply since those interests are not real property or interests in real property. Other exclusions relevant to legal entities might be available however.

3. <u>Wife's Purchase of 30% Minority Interest in HT Partnership does not result in a Change in Ownership of Partnership Property – Section 64(c)(2).</u>

Section 64(a) states that except as provided in Section 64(c) and 64(d), 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." However, under the decision in *Zapara v. Orange County* (1994) 26 Cal.App.4th 464, the court held that Section 64(a) did not apply to the dissolution of a partnership caused by the "buy-out" of the minority partner's interests by the majority partner, who owned 73% of the partnership interests. The court's reasoning was that because of the dissolution by operation of law (automatic termination of a partnership with only one partner), the majority partner became the owner of 100% of the property, which was not proportionate to his 73% interests in the partnership. This decision contradicted the long-standing interpretation of Board staff, that transfers of minority interests to

[6] A power of appointment is *general* only to the extent that it may be exercised in favor of the donee, the donee's estate, or creditors, whether or not it is exercisable in favor of others. A power of appointment is *special* if it is limited by an ascertainable standard relating to the person's health, support, maintenance, and it is not general. (Annotated Letter No. 625.0234, Eisenlauer 12/04/90, attached)

the majority partner, whether such transfers occurred by reason of buy-out or death, were excluded from change in ownership under Section 64(a).

In order to reverse the decision in *Zapara v. Orange County* (1994) 26 Cal.App.4th 464, the Board of Equalization sponsored legislation, codified in Section 64(c)(2), to exclude transfers of minority partnership interests to the majority partner, even if the partnership dissolves when the majority partner acquires 100%. Enacted by Section 40 of Stats.1995, Ch.497, that language states:

> (2) On or after January 1, 1996, when an owner of a majority ownership interest in any partnership obtains all of the remaining ownership interests in that partnership..., the purchase or transfer of the minority interests, subject to the appropriate application of the step-transaction doctrine, shall not be a change in ownership of the real property owned by the partnership.

Thus, minority interest transfers to the majority partner, by reason of purchase or death, do not constitute a change in control or change in ownership, even if the result is partnership dissolution (because the majority partner is the sole partner). If therefore, Wife, subsequent to Husband's death, purchases X's remaining 30% interest in HT Partnership, there would not be a change in control or change in ownership; Wife already obtained control on the date of Husband's death through her acquisition of his 70% interest and the exclusion in Section 64(c)(2) applies. Although the facts do not indicate whether HT Partnership will continue after Wife's purchase of X's 30% interest, the result would be the same even if the partnership dissolved, based upon Section 64(c)(2).

In addition, there is no change in ownership under Section 64(d), (even if Husband and X were classified as "original coowners"), because the provisions of the interspousal exclusion in Rule 462.220 (c) previously noted, state that interspousal transfers of ownership interests in legal entities by "original coowners" are not to be counted for purposes of Section 64(d). Accordingly, Husband's initial 70% transfer of "original coowner" interests in HT Partnership to Wife would not be counted; therefore, Wife's subsequent acquisition of X's 30% of "original coowner" interests will not exceed the required transfer of more than 50% to trigger a Section 64(d) change in ownership.

4. Alternatively, if Wife simultaneously causes the Trust to acquire the remaining 30% interest in HT Partnership and to sell its 30% interest in TH Partnership, there is no change in ownership in either, regardless of the value of the interests.

As an alternative to the plan described in 3 above, Wife may consider the following transaction executed simultaneously subsequent to Husband's death: cause the Trust to acquire X's remaining 30% interest in HT Partnership and sell the Trust's remaining 30% in TH Partnership to a third party. Assuming the 30% interests in each partnership have equal values, you question whether a change in ownership would result as to the real property in either partnership. While there would be no change in ownership in either instance, the reason is not related to the value of the 30% partnership interests, but because of the application of the exclusions in Section 64(a) and Section 64(c)(2).

As noted above, Section 64(a) provides that the purchase or transfer of ownership interests in legal entities shall not constitute a transfer of the real property of the legal entity, unless the transfer falls within Section 61(i), 64(c) or 64(d) and Section 64(c)(2) provides that the purchase or transfer of minority interests by a majority owner of partnership interests shall not be a change in ownership of partnership real property. Where as here, separate 30% partnership interests would be transferred, each transfer must be evaluated on its own merit, to determine whether the change in ownership exclusion in Section 64(a) or Section 64(c)(2) applies. The key factual issue under both of these exclusions is the percentage of the partnership interests transferred (in the partnership capital and profits), not the value of the interests.

If therefore, Wife, subsequent to Husband's death, purchases X's remaining 30% interest in HT Partnership, as indicated above, there would not be a change in control or change in ownership, because Wife would have already obtained control on the date of Husband's death through her acquisition of his 70% interest. Regardless of whether HT Partnership will continue after Wife's purchase or whether it dissolves, the transfer would be excluded from change in ownership under Section 64(c)(2). In a similar manner, if Wife at the same time sells the Trust's remaining 30% interest in TH Partnership to an unrelated third party, there would not be a change in control or change in ownership, because X would already be in control through his 70% ownership in the partnership on the date of the third party's acquisition. The transfer to the third party would be excluded under Section 64(a), with TH Partnership thereafter being owned 70% by X and 30% by the third party.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on the present law and facts set forth herein. Therefore, they are not binding on any person or entity.

Sincerely,

/s/ Kristine Cazadd

Kristine Cazadd
Senior Tax Counsel

KEC:tr
prop/precdnt/prtnrshp/00/02kec

Attachments

cc: Honorable
County Assessor

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Mr. David Gau, MIC:64
Mr. Charlie Knudsen, MIC:62
Ms. Jennifer Willis, MIC:70