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Executive Director

June 4, 1999

Subject: *Taxability of Real Property Owned by PERS Partnership*

Mr. :

This is in reply to your letter of April 30, 1999 addressed to Assistant Chief Counsel Larry Augusta in which you inquire as to the tax exempt status of real property owned by a partnership in which the California Public Employees Retirement System (CalPERS) is the majority partner. As you state, several CalPERS advisors are discussing the possibility of forming partnerships with CalPERS for the purpose of owning and managing properties for CalPERS. CalPERS would become the majority partner in these partnerships, holding an interest from 97 to 99%.

For the reasons set forth below, real property owned by a partnership in which CalPERS is a partner is not exempt from property taxation. The property tax exemption for property owned by the state extends only to property owned directly by CalPERS and not to property owned by a legal entity in which CalPERS holds an ownership interest. Thus, a transfer of real property from CalPERS to such a partnership would result in a change in ownership of the property and, absent an applicable exclusion, reassessment of the property.

Legal Analysis

The California Constitution declares that, in general, all property located in the State is taxable. Article XIII, Section 1 of the Constitution provides in part that "[u]nless otherwise provided by this Constitution or the laws of the United States. (a) All property is taxable and shall be assessed at the same percentage of fair market value . . . ." The general rule of taxability is subject to numerous exemptions which are largely set forth in Section 3 of Article XIII. Of relevance to the situation presented here, subdivision (a) of Section 3 provides:

> Sec. 3. Exempt property. The following are exempt from property taxation:
>
> * * *
>
> (a) Property owned by the State.

Revenue and Taxation Code Section 202 implements Article XIII, Section 3, and subdivision (a)(4) of Section 202 provides:

> The exemption of the following property is as specified in subdivisions (a), (b), (d) and (h) of Section 3 of Article XIII of the Constitution, except as is otherwise provided in subdivision (a) of Section 11 thereof:
>
> * * *
>
> (4) Property belonging to this state, a county, or a city . . . .

Article XIII, Section 3(a) and Revenue and Taxation Code Section 202(a)(4) clearly state that only property owned by the State is exempt from property taxation.

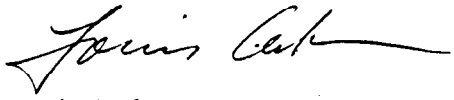
Property owned by a State agency, such as CalPERS, is property owned by the State and, thus, is exempt from property taxation under the foregoing provisions. However, property acquired by a partnership in which a State agency holds an ownership interest is not property owned by the State. Under California law, property acquired by a partnership is property of the partnership and not of the partners individually. Corporations Code section 16203. Furthermore, a partnership is an entity distinct from its partners. Corporations Code section 16201. Thus, property acquired by a partnership in which CalPERS is a partner is property owned by that partnership, which is an entity distinct from its partners. Therefore, the property is not exempt from property taxation pursuant to Article XIII, section 3 because such property is not owned by CalPERS.

With respect to change in ownership, a transfer of property by a single partner into a partnership is a change in ownership unless a relevant exclusion applies. It does not appear that any exclusion would be available for the contemplated transfers of properties from CalPERS to the partnerships. Thus, upon the transfers the properties would be reassessed. Finally, in response to the two questions you pose regarding change in ownership of minority interests, upon the formation of a partnership, the acquisition of a minority interest in the partnership by a private party or by CalPERS would not be a change in ownership pursuant to subdivision (a) of section 64.

In conclusion, our view is consistent with Government Code section 7510, subdivision (b)(3), referred to in your letter, which provides that real property owned by a legal entity in which CalPERS has invested is not considered an investment by CalPERS in that real property. Stated differently, the property owned by the legal entity is not property owned by CalPERS and, therefore, is not exempt.

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.

Very truly yours,



Louis Ambrose
Tax Counsel

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