File

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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May 30, 1991

No. 91/43

TO COUNTY ASSESSORS:

U. S. POSTAL SERVICE PROPERTIES

It has come to our attention that some 500 separate California limited partnerships owning real property have been consolidated into a single master limited partnership by court order. The real property holdings of these partnerships include 100 postal facilities. The postal service holds that these facilities should not be reappraised. Apparently, the proportional ownership interests in the old partnerships are identical to those in the new master partnership except that a new general partner has been selected by the court. The court replaced the previous general partner who was convicted of tax fraud and conspiracy.

According to information we have received, upon the transfer of the real property from the separate partnerships to the single partnership, the transferor entities will be dissolved and the limited partners of the transferor entities will receive a proportionate interest in a trust which will be the sole limited partner of the new single partnership. As previously stated, the general partner of the transferor partnership has by court order been replaced in the transferee partnership by a new general partner. The postal service contends that Revenue and Taxation Code Section 62(a)(2) excludes the transfer from change in ownership. The postal service maintains that the transfer of title did not involve the giving of valuable consideration and that the transfer would not have occurred except for the conviction of the former general partner. We do not concur with the postal service's arguments. It is our position that a change in ownership does occur based on the following analysis.

Revenue and Taxation Code Section 60 provides that a change in ownership means 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(i) provides that a change in ownership, as defined in Section 60, includes the transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person. (As a general provision of the Revenue and Taxation Code, Section 19 defines "person" to include any person, firm, partnership, association, corporation, company, syndicate, estate, trust, business trust, or organization of any kind.)

Section 62(a)(2) provides that change in ownership shall not include any transfer between an individual or individuals and a legal entity or between

legal entities which 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.

The statutory provisions referenced above are interpreted by Property Tax Rule 462. Rule 462(a)(2) provides that 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. This section of Rule 462 provides further that 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, or any other means.

Rule 462(j) provides that a change in ownership includes transfers of property to and by legal entities. Except for certain exclusions, including transfers of real property between separate legal entities or by an individual(s) to a legal entity (or vice versa), which result solely in a change in the method of holding title and in which the proportional ownership interests in the property remain the same after the transfer, Rule 462(j) provides that the transfer of any interest in real property to a corporation, partnership, or other legal entity is a change in ownership of such real property transferred.

It seems clear that the transfer of real property from the separate partnerships, with the former general partner, to the new single partnership, with a different general partner, qualifies as a transfer between legal entities in which the proportional ownership interests in the real property did not remain the same after the transfer. Moreover, the fact that the general partner was replaced by court order following a criminal conviction does not alter the change in ownership status of the transfer. Accordingly, we disagree with the postal service's contention that the transfer is excluded from the meaning of change in ownership.

If your have any questions concerning these transfers involving postal service properties, please call our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

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