STATE OF CALIFORNIA

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September 19, 1990

This is sent in response to your letter dated September 7, 1990, wherein you request an opinion regarding the change in ownership consequences of a real property transaction.

Facts

The facts set forth in the submitted materials are as follows:

1. Husband and wife owned a mobilehome park (the "property"), apparently as community property.

2. On December 13, 1989, husband and wife recorded a grant deed of the property to the River Paradise partnership (the "partnership").

3. On December 13, 1989, a statement of partnership was recorded for the River Paradise partnership, listing the partners as follows:

   (1) A revocable living trust for husband and wife (the "trust");

   (2) the daughter of husband and wife (the "daughter"); and

   (3) the son of husband and wife (the "son").

4. The trust holds a 98 percent beneficial ownership interest in the partnership and son and daughter jointly hold a 2 percent beneficial ownership interest in the partnership.

Law and Analysis

All code references are to the Revenue and Taxation Code unless otherwise expressly stated.

As you correctly note, neither a transfer of real property to a revocable trust (section 62(d)), nor a qualifying transfer of real property between parents and their children (section 63.1) is ordinarily considered a change in ownership for property tax reappraisal purposes. However, the described transfer in this case was from individual owners to a legal entity.

The definition of "eligible transferee" in section 63.1 does not include a partnership in which the transferee holds an interest. Further, the children in this case received a 2 percent interest in a partnership, not an interest in real property. Section 63.1 only applies when real property is transferred. In fact, under section 63.1(c)(6), real property is expressly defined so as not to include any interest in a legal entity. Therefore, section 63.1 does not apply.

Ordinarily, a transfer between individuals and a legal entity, such as occurred in this case, constitutes a change in ownership under section 61(i). But the transfer may be excluded from change in ownership consquences if it qualifies under section 62(a)(2). Pursuant to section 62(a)(2), change in ownership does not include:

> Any transfer between an individual or individuals and a legal entity... such as a... partnership,..., 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....

In this case, each transferor had a 50 percent interest in the property, but only a 49 percent interest in the partnership. Therefore, the proportional ownership interests of the transferors and transferees, as represented by partnership interests, did not remain the same after the transfer. It follows that the transfer does not qualify for exclusion under the provisions of section 62(a)(2).

The taxpayers argue that the transaction was in "substance" an "intra-family transfer," and, in support of this argument, quote the legislative note to section 63.1. However, the legislative intent set forth in the note is not applicable to this situation.

The note provides that transfers between eligible parents and children "shall not be ignored or given less than full recognition under a substance-over-form or step-transaction doctrine, where the sole purpose of the transfer is to permit an immediate retransfer from an eligible transferor... to an eligible transferee.... Further, transfers of real property... shall also be fully recognized when the transfers are immediately followed by a transfer from the eligible transferee... to a... legal entity where the transferee or transferees are the sole owner or owners of the entity...."

This situation does not involve either a retransfer or a subsequent transfer of property. Further, no substance-over-form or step-transaction argument is being made. Even a liberal construction of section 63.1 will not permit application in this case since an interest in a legal entity, and not real property, was transferred to the children.

Pursuant to the above, it is our opinion that, since no statutory exclusion applies, the December 13, 1989, transfer to the partnership constitutes a change in ownership of the property. Of course, this opinion is advisory only and is not binding on either your office or the Stanislaus County Assessment Appeals Board.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

Robert Lambert

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cc: Mr. John Hagerty
Mr. Verne Walton