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STATE OF CALIFORNIA

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RECEIVED
AUG 1 5 1988
Division of Assessment Standards
SACRAMENTO

August 12, 1988

Dear Ms.

This is in response to your letter of June 22, 1988, to Mr. In that letter, you ask our opinion about the change in ownership consequences of the purchase of a certain interest in a partnership. The facts as provided in your letter and our telephone conversation of August 1, 1988, are summarized below.

H was the sole grantor of a revocable trust. Among other assets, the trust owned a 50 percent interest in a general partnership. The trust also owned 100 percent of the shares of a corporation, H Associates.

The terms of the trust give Ms. H the sole power to name the trustees of the trust. At the time of the purchase in question, the trustees were H , her husband, and one of the officers of the corporation.

In 1983, H Associates purchased a 40 percent interest in the partnership from an unrelated individual. Ownership interest in the partnership became:

Trust	50%
H Associates	40%
Unrelated Individual	10%
	100%

The County Assessor determined that a change in ownership had taken place because the trust had acquired a majority

ownership interest in the partnership. The property was reappraised.

The Assessment Appeals Board would not hear your appeal (apparently because the issue was a question of law). The property tax consultants you hired negotiated a lower value on reappraisal with the County Assessor. You state that "[b]y signing the stipulation prior to the court hearing we are told this act prevented our being heard on the change in ownership question."

Your view is that the trust and corporation are separate entities controlled by different people, namely, the trustees of the trust and the board of directors of the corporation. Therefore, ownership by one entity cannot be attributed to the other. You also question whether a change in ownership in a partnership occurs when a 50 percent partner remains unchanged.

ANALYSIS

Section 60 of the Revenue and Taxation Code (all section references contained herein are to the Revenue and Taxation Code) states 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.

However, a change in ownership shall not include:

> 62(d) Any 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 trustor retains the reversion and in which the interest of others does not exceed 12 years duration.

Section 64 deals in particular with the transfer of ownership interest in entities and states in pertinent part:

> (a) Except as provided in subdivision (h) of Section 61 and subdivisions (c) and (d) of this section, the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership interests, shall not be deemed to constitute a transfer of the real property of the legal entity.

* * *

(c) When a corporation, partnership, other legal entity or any other person obtains control, as defined in Section 25105, in any corporation, or obtains a majority ownership interest in any partnership or other legal entity through the purchase or transfer of corporate stock, partnership interest, or ownership interests in other legal entities, such purchase or transfer of such stock or other interest shall be a change of ownership of property owned by the corporation, partnership, or other legal entity in which the controlling interest is obtained.

These statutory provisions have been interpreted by subdivision (j) of property tax Rule 462. That subdivision provides in pertinent part:

(3) Transfers of ownership interests in legal entities. Except as is otherwise provided in subdivision (4), the purchase or transfer of corporate stock, partnership shares, or ownership interests in other legal entities is not a change in ownership of the real property of the legal entity.

(4) Exceptions:

(A) When any corporation, partnership, other legal entity or any person:

* * *

(ii) obtains direct or indirect ownership of more than 50 percent of the total interest in both partnership capital and profits.

Under these code and rule provisions, a change in ownership of the real property occurs when an individual or an entity obtains direct or <u>indirect</u> ownership of more than 50 percent of the total interest in both partnership capital and profits. Because Betty Hutton was the sole grantor of a revocable trust, she was considered the owner of the assets of that trust. Section 62(d) recognizes this principle by stating that a change in ownership does <u>not</u> occur when a grantor transfers real property into a revocable trust. The grantor is still considered the owner of the real property. Since Betty Hutton was the beneficial owner of the trust assets, she was the indirect owner of 50 percent of the interest in the partnership.

When the corporation which is wholly owned by the trust acquired 40 percent of the ownership interest in the

partnership, Betty Hutton, the owner of the trust's assets, became the indirect owner of 90 percent of the ownership interests in the partnership. Thus, a change in ownership of the real property of the partnership occurred because an individual gained an indirect ownership of more than 50 percent of the interest in the partnership (§ 64(c) and Rule 462(j)(4)(ii). The fact that the trust and the corporation are separate entities does not alter the fact that an individual, Betty Hutton, the owner of the trust assets, acquired an indirect ownership interest of more than 50 percent. Therefore, we believe that the county's decision that a change in ownership had occurred was correct.

You also state in your letter: "Besides the 50% partner was unchanged and they were the controlling partner. If in fact the direct and indirect control factor prevails, then how is it considered a change when the 50% control became 90%?" Under the statute and regulations, the ownership of only 50 percent of the interest in a partnership does not constitute a majority ownership interest. It is only when more than 50 percent is acquired that a majority ownership interest is obtained. Thus, as an indirect owner of only 50 percent of the interest in the partnership, Betty Hutton did not have a majority ownership interest. It was only when she acquired an indirect ownership interest of more than 50 percent that she acquired a majority ownership interest.

Your letter also asked about the status of "two very large civil court cases which have been decided on both sides of the question." I believe you are referring to the following two cases: Sav-On Drugs, Inc. v. County of Orange (1987) 190 Cal.App.3d 1611 and Title Insurance & Trust Co. v. County of Riverside (1988) 196 Cal.App.3d 1353. In the Sav-On case, the constitutionality of Section 64(c) was upheld. The second case, Ticor, is currently under consideration by the California Supreme Court and is not yet final. We expect that the decision in the Ticor case will be consistent with the decision in Sav-On.

I trust that the above information answers the questions you have raised. The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. It is within the authority of the assessor of

Orange County to determine how property located in that county should be assessed.

Very truly yours,

Barbara G. Elbrecht

Barbara G. Elbrecht
Tax Counsel

BGE/rz

cc: Honorable Bradley L. Jacobs
Orange County Assessor
Mr. Gordon P. Adelman
Mr. Robert Gustafson
Mr. Verne Walton