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August 4, 2006

Honorable Dale F. Flippin
Nevada County Assessor
Attn: Ms.
950 Maidu Avenue
Nevada City, CA 95959-8600

Re: Change in Ownership

Dear Ms. :

This is in response to your June 26, 2006 fax to Tax Counsel Mariam Baxley, requesting our opinion as to whether the transfers of interests in real property (the Property) by a limited liability company, L , LLC (LLC), to revocable trusts, established by the owners of LLC and their wives, resulted in a change in ownership in the Property. As explained in further detail below, it is our opinion that no change in ownership occurred as a result of the transfers.

Factual Background

Based on your June 26, 2006 fax, and subsequent faxes of additional information to me, we understand the facts to be as follows: Three individuals (collectively, the Members) each owned a one-third membership interest in LLC. Each individual is married. As part of LLC’s operating agreement, each individual’s spouse signed a spousal consent document (the Spousal Consents), committing their community property interests in their husbands’ membership interests in LLC to the provisions of the operating agreement. Each married couple also established a revocable trust, with themselves as trustees. LLC distributed the Property, one-third interest to each revocable trust.

Legal Analysis

Section 60 provides that a change in ownership is “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.” It includes, but is not limited to, “[t]he transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person.” (Rev. & Tax. Code, § 61, subd. (j).) Thus, a transfer of real property from a legal entity to a trust generally results in a change in ownership unless excluded by another provision of law. Section 62, subdivision (a)(2) excludes the following from change in ownership:

Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, that 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 the facts you present, since there is no information to the contrary, we assume that the membership interests in LLC were the community property of each Member and his spouse. Where a husband and wife acquire an ownership interest in a legal entity as community property, “the acquisition, for property tax purposes, should be treated in the same manner as an acquisition where husband and wife take title as ‘joint tenants.’” (Letter To Assessors No. 85/33.) Thus, for property tax purposes, each spouse was considered an owner of 50 percent of her husband’s one-third membership interest in LLC.

Family Code sections 850 – 853 provide a means by which community property may be transmuted to a spouse’s separate property. To be valid, a transmutation of community property into separate property must: (1) be made in writing; (2) contain an express declaration of transmutation; and (3) be signed by the spouse whose interest is adversely affected. (Fam. Code, § 852, subd. (a).)

At issue in this case is the effect of the Spousal Consents signed by each individual members’ spouse. In our view, the Spousal Consents did not transmute the Members’ interests in LLC from community property to their separate property. The Spousal Consents at issue here fail to make an express declaration transmuting the wives’ community property interests into separate property. Instead, they merely authorize their husbands to manage the business dealings of the LLC according to the operating agreement, including the control of potential transfers or sales of their LLC membership interests.

Since the Spousal Consents did not transmute the Members’ interests in LLC from community property to their separate property prior to the transfer, each individual member and his spouse were the joint owners of the individual’s membership interest in LLC for purposes of calculating proportional ownership interests under section 62, subdivision (a)(2). Thus, prior to the transfers, each couple jointly owned a one-third interest in the Property through their membership interest in LLC. After the transfers, each couple owned one-third of the Property through their revocable trusts. Thus, because the transfers resulted solely in a change in the method of holding title to the real property in which proportional ownership interests of the transferors and transferees, in each and every piece of real property transferred, remained the same, they qualify for the section 62, subdivision (a)(2) exclusion from change in ownership.

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

Sincerely,



Richard Moon
Tax Counsel

RM:eb

Prec/LLC/06/341.rm
Prec/Trusts/06/341.rm

cc: Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Ms. Mickie Stuckey MIC:62
Mr. Todd Gilman MIC:70