



STATE OF CALIFORNIA

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January 13, 2009

***Re: Exclusion from Change in Ownership under Revenue and Taxation Code § 62(a)(2)  
Assignment No. 08-237***

Dear Mr. :

This letter is in response to your letter to me dated October 24, 2008.

You have asked our opinion on whether a change in ownership would occur upon the transfer of real property out of a limited partnership to one of its limited partners who would then hold the property as a tenant in common with the limited partnership. It is our opinion that the property would not undergo a change in ownership under the facts you presented, but the remaining partners would become "original co-owners" with respect to their partnership interests.

**FACTS**

A limited partnership (the Partnership) owns a single parcel retail shopping center in California (the Property). The capital and profits interests of the Partnership are owned as shown on the chart below. It is proposed that limited partner A redeem its limited partnership interest in exchange for a 60 percent tenancy in common interest in the Property. The Partnership will continue to own the remaining 40 percent undivided interest in the Property, and the remaining partners will collectively own the Partnership capital and profits interests in the same respective proportions they owned prior to the transaction, as shown on the chart below.

**BEFORE:**

Partnership capital and profits is owned:

60% limited partner A  
24% limited partner B  
12% limited partner C  
3.6% nine limited partners  
(.4% each)

.4% general partner

The Property is owned: 100%  
the Partnership

**AFTER:**

Partnership capital and profits is owned:

60% limited partner B  
30% limited partner C  
9% nine limited partners  
(1% each)  
1% general partner

The Property is owned (tenants in common):

40% the Partnership  
60% A

**LAW & ANALYSIS**

California Revenue and Taxation Code<sup>1</sup> section 62, subdivision (a)(2), and Property Tax Rule<sup>2</sup> 462.180, subdivision (b)(2) exclude from change in ownership a transfer of real property between legal entities or between a legal entity and an individual that results solely in a change in the method of holding title and in which the proportional ownership interests in all real property transferred remains the same after the transfer. This rule excludes from change in ownership both a transfer of real property from its owners to an entity in exchange for the same proportional ownership interests in the entity as each owner owned in the property, and a transfer of the property from the entity back to the owners in redemption or proportionate reduction of their interests in the entity, so long as the proportionality requirement is satisfied. For property tax purposes, the ownership interests in a limited partnership are represented by the percentage of ownership in both capital and profits of the limited partnership. (See Rule 462.180, subdivision (d)(1)(B).)

Rule 462.180, subdivision (d)(4) extends the section 62, subdivision (a)(2) exclusion to transfers of interests in legal entities. Thus, transfers of legal entity interests between legal entities or between an individual and a legal entity which result solely in a change in the method of holding title, and in which proportional ownership interests in all real property represented by the transferred interests remain the same after the transfer, do not constitute a change in ownership.

When an entity transfers to a withdrawing owner that portion of its real property representing the withdrawing owner's proportionate share of entity ownership, in redemption of its ownership interest, while the other legal entity owner or owners continue to maintain their ownership of the real property indirectly through their entity ownership, the transfer to the withdrawing owner is excluded from change in ownership under section 62, subdivision (a)(2) and Rule 462.180, subdivision (b)(2). Thus, under your facts, where the Partnership transfers a

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<sup>1</sup> All section references are to the Revenue and Taxation Code.

<sup>2</sup> 18 Cal. Code Regs. § 462.180, subd. (b)(2). All Rule references are sections to title 18 of the California Code of Regulations.

60 percent interest in the Property to A in exchange for his capital and profits interest in the Partnership, the transfer is excluded from change in ownership.

As a result of A's complete withdrawal from the Partnership, each remaining partner's ownership interest in the Partnership, represented by Partnership capital and profits, would automatically increase by a factor of 2.5, which would be deemed a transfer from the Partnership to each such partner of an additional percentage of Partnership capital and profits interests. Such deemed transfers would be excluded from change in ownership under Rule 462.180, subdivision (d)(4) because each remaining partner's proportional ownership interest in the Property represented by the transferred Partnership interests would remain the same after the transfer. Before and after the transfer, B's ownership interest in the Property represented by its Partnership capital and profits interests is 24 percent. Before, B owns 24 percent of the capital and profits interests of the Partnership, which owned 100 percent of the Property, and after, B would own 60 percent of the capital and profits interests of the Partnership, which would own 40 percent of the Property. Likewise, before and after the transfer, C's ownership interest in the Property represented by Partnership capital and profits interests is 12 percent. Before, C owns 12 percent of the capital and profits of the Partnership, which owned 100 percent of the Property, and after, C would own 30 percent of the capital and profits interests of the Partnership, which would own 40 percent of the Property. Similarly, before and after the transfer, the remaining nine limited partners and the general partner each have an ownership interest in the Property represented by Partnership capital and profits interests of .4 percent. Before, each owns .4 percent of the capital and profits interests of the Partnership, which owned 100 percent of the Property, and after, each would own 1 percent of the capital and profits interests of the Partnership, which would own 40 percent of the Property.

Because B obtained a majority ownership interest and control of the Partnership, there is an issue whether a change in ownership would occur with respect to the 40 percent of the property the Partnership would own. Under section 64, subdivision (c)(1), when any legal entity or person obtains a majority ownership interest in a partnership through the purchase or transfer of a partnership interest, the purchase or transfer of that interest causes a change in ownership of the real property owned by the partnership. However, as we stated in Annotation 220.0375.010 (November 19, 1999), where section 62, subdivision (a)(2) excludes from change in ownership a transfer that would otherwise result in a change in control under section 64, subdivision (c)(1), the section 62, subdivision (a)(2) exclusion takes precedence. Therefore, here, because B's increase in Partnership ownership would be excluded under section 62, subdivision (a)(2), that B also simultaneously would obtain a majority ownership interest in the Partnership would not cause a change in ownership under section 64, subdivision (c)(1) of the 40 percent of the Property the Partnership would own directly.

We note that, after a transfer of real property to an entity in a transaction that is excluded from change in ownership under section 62, subdivision (a)(2), or a transfer of interests in a legal entity in a transaction that is excluded from change in ownership under Rule 462.180, subdivision (d)(4), the persons holding ownership interests in that transferee legal entity immediately after the transfer become "original co-owners" under section 64, subdivision (d). As a consequence, when the remaining partners (B, C, the other nine limited partners, and the general partner) acquire additional Partnership capital and profits interests, which is excluded under Rule 462.180, subdivision (d)(4), each becomes an original co-owner. Thus, under section

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64, subdivision (d), if and when any of B, C, the nine limited partners, or the general partner transfer cumulatively more than 50 percent of the Partnership capital and profits interests in one or more transactions, a change in ownership will occur with respect to the 40 percent interest of the Property the Partnership would own directly.

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.

Sincerely,

*/s/ Matthew Burke*

Matthew Burke  
Tax Counsel

MB:cme  
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cc: Honorable Kenneth Stieger, President  
California Assessors' Association

Mr. David Gau	MIC:63
Mr. Dean Kinnee	MIC:64
Mr. Todd Gilman	MIC:70