



STATE BOARD OF EQUALIZATION

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Executive Secretary

April 12, 1988

Dear

This is in response to your request for a legal opinion on the following hypothetical situations:

Hypothetical #1

Mr. Partner owns a 49% interest in the capital and profits of Partnership as his sole and separate property. Mr. Partner's wife, Mrs. Partner, would like to purchase a 5% interest in the capital and profits of Partnership from a third party as her sole and separate property.

If Mrs. Partner purchases a 5% interest in the Partnership with separate property funds, will a change in ownership occur as to the real property owned by Partnership?

Hypothetical #2

Mr. Partner holds a 49% interest in the capital and profits of Partnership. It is unclear as to whether the interest is his separate property or community property. Mr. Partner's wife, Mrs. Partner, would like to purchase a 5% interest in the capital and profits of Partnership from a third party.

If Mrs. Partner purchases the 5% interest in the Partnership with community property funds, will a change of ownership occur as to the real property owned by the Partnership?

If Mrs. Partner purchases the 5% interest in the Partnership with separate property funds, will a change of ownership occur as to the real property owned by the Partnership?

Hypothetical #3

Mr. Partner holds a 49% interest in the capital and profits of Partnership. Although the Partnership interest is held in

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the name of Mr. Partner, it is a community property asset of Mr. Partner and his wife, Mrs. Partner. Mrs. Partner would like to purchase a 5% interest in the capital and profits of Partnership from a third party.

If Mrs. Partner purchases the 5% interest in the Partnership with community property funds, will a change of ownership occur as to the real property owned by the Partnership?

If Mrs. Partner purchases the 5% interest in the Partnership with separate property funds, will a change of ownership occur as to the real property owned by the Partnership?

As you acknowledge in your letter, all of your questions go to the issue of to what extent the ownership interests of one spouse in a legal entity will be attributed to the other spouse. This has been a very controversial issue. Board Rule 462(j)(4)(A) provides that there is a change in ownership when any corporation, partnership, other legal entity or any person obtains direct or indirect ownership or control of more than 50 percent of the interest in the legal entity. To date, we have not interpreted this rule to mean that the interest owned in a legal entity by one spouse is indirectly owned by the other spouse. In fact, as you noted in your letter, we have issued two Letters to Assessors which state a contrary opinion. Letter to Assessors No. 83/17 (July 15, 1983) states that it is the opinion of the legal staff that a husband and wife holding an ownership interest in legal entities as joint tenants are to be considered separate individuals, each owning 50 percent of the ownership. The basis for this opinion is the long established rule that when husband and wife take title to property as joint tenants, the ownership interest of each spouse is separate property. (Watson v. Peyton (1937) 10 Cal.2d 156, 159.) Letter to Assessors No. 85/33 (March 5, 1985) simply states the opinion of the Board's legal staff that "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 a husband and wife take title as 'joint tenants.'"

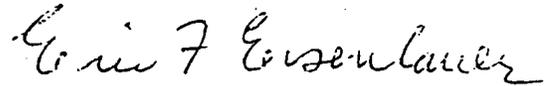
The opinions expressed in the above two letters represent our current position. They are advisory only, however, and are not binding on the assessor of any county. Further, we recognize that the conclusions stated in these letters are not necessarily free from doubt. Keeping these caveats in mind, our response to your hypothetical questions is that with the possible exception of the first question under hypothetical #2 none of the hypothetical situations will result in a change in ownership. If it is determined under hypothetical #2 that Mr. Partner's partnership interest of 49 percent is in fact his separate

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property, the acquisition of a 5 percent interest in the partnership by Mrs. Partner from community property funds would result in a change in ownership of the real property owned by the partnership in our opinion because Mr. Partner would have thereby obtained "direct or indirect ownership of more than 50 percent of the total interest in both partnership capital and profits." (Rule 462(j)(3), (4)(A)(ii).)

If we can be of further assistance in this matter, please let us know.

Very truly yours,



Eric F. Eisenlauer  
Tax Counsel

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cc: