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Executive Director

April 1, 1999

Dear Mr. :

This is in response to your letter dated February 19, 1999, addressed to Assistant Chief Counsel Larry Augusta, in which you request our opinion that the redemption of certain shares of stock of an unnamed corporation, described in your letter, would not effect a change in ownership of the corporation's real property. For the reasons set forth below, which is essentially the same analysis as you submit in your letter, we concur that this transaction would not result in a change in ownership.

In 1989, the corporation had 151,060 shares of stock outstanding. Husband and Husband's sister each owned 50% of these outstanding shares, or 75,530 shares each. In 1991, Husband transmuted 59,530 of his shares into the community property of his wife and himself. He retained the remaining 16,000 shares as his separate property.

In 1992, the corporation redeemed 26,030 of the sister's shares, leaving 125,030 total shares outstanding, and owned as follows:

Husband's Separate Property:	16,000 Shares (12.8%)
Husband and Wife's Community Property:	59,530 Shares (47.6%)
Sister:	49,500 Shares (39.6%)

We assume that the corporation owns real property in California. You ask whether, in our opinion, the redemption resulted in a change in control of the corporation, which would result in a change in ownership and reassessment of the corporation's real property for property tax purposes, pursuant to Revenue and Taxation Code section 64, subdivision (c).

Section 64 provides in relevant part:

(a) Except as provided in subdivision (i) 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 or limited liability company interests, shall not be deemed to constitute a transfer of the real property of the legal entity. This subdivision is applicable to the purchase or transfer of ownership interests in a partnership without regard to whether it is a continuing or a dissolved partnership.

* * *

(c)(1) When a corporation, partnership, limited liability company, other legal entity, or any other person obtains control through direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity through the purchase or transfer of corporate stock, partnership, or limited liability company interest, or ownership interests in other legal entities, including any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, the purchase or transfer of that stock or other interest shall be a change of ownership of the real property owned by the corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained.

* * *

We have previously stated our opinion that if any person or entity obtains direct or indirect control of a corporation as a result of a stock redemption, the requirements of subdivision (c) of section 64 are met, and a change in ownership of the real property of the corporation results. Control is defined in that subdivision as owning more than 50 percent of the voting stock of the corporation.

As the facts outlined above indicate, neither Husband nor the community obtained direct control of the corporation. Under those facts, Husband could be found to have obtained indirect control of the corporation only if he is deemed to be the owner of substantially all of the shares owned by his wife and him as community property. However, as you point out, that has not been our interpretation of section 64, subdivision (c). We have previously expressed the view 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 husband and wife take title as "joint tenants." See Letter To Assessors No. 85/33. We have further expressed the view that a husband and wife holding ownership interests in legal entities as joint tenants are to be considered separate individuals, each owning 50 percent of the

April 1, 1999

ownership interests in question. See Letter To County Assessors Only No. 83/17. It has been 16 years since the latter has been issued, and there has been no reported appellate court decision on this issue. Nor are we aware of any pending litigation involving this issue, or of any county assessor who is not following the letters.

Applying this interpretation to the facts outlined above, Husband would be considered the owner of one-half of the shares owned by him and his wife as community property, or 29,765 shares, plus the 16,000 shares he owns as his separate property, for a total of 45,765 shares. Those shares represent only 36.6 percent of the total outstanding shares following the redemption. As such, Husband would not obtain control of the corporation, and no change in ownership would result by reason of the stock redemption described herein.

The views expressed in this letter are advisory only; 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,



Daniel G. Nauman
Tax Counsel

DGN:jd

<h:/property/procednt/corporate/1999/04/oa.doc>

cc: Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:70

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 Executive Director

May 20, 1996

In Re: Change in Ownership - Application of Interspousal Exclusion to Voting Control of Corporate Stock.

Dear

This is in response to your January 30, 1996 letter to [redacted], in which you request comments concerning certain change in ownership issues raised by Mr. [redacted], the attorney representing [redacted] Land & Cattle Company ("JVL&CC, Inc.") et al. in his January 19, 1996 letter to you regarding the change in control of WJF Land Corporation ("WJF"), which owns the real property to be reassessed.

Based on the letters and documentation submitted, (County of Modoc Assessor letter and attachments, January 30, 1995; and [redacted] letter and attachments, August 1, August 7, and August 9, 1995), three corporations, BJF Cattle Corporation ("BJF"), RRF Ranch Corporation ("RRF"), and CLF Ranch Corporation ("CLF") merged into the fourth corporation, "WJF," which changed its name to "JVL&CC, Inc."

We previously concluded that the result of this transaction was a change in control of WJF under Revenue and Taxation Code Section 64(c). The reason for our conclusion was that prior to the merger, all of the stock in WJF (550 total shares) was owned/controlled by Warren and Beverly as community property, and after the merger, more than 50% of the stock in WJF (renamed JVL&CC, Inc.) was owned/controlled by Warren by virtue of his voting control of 813 out of 1135 total shares.

Mr. [redacted]'s January 19, 1996 letter rejects this conclusion and asserts that Warren already had control of more than 50% of the stock in WJF prior to the merger. Two reasons are given in the letter supporting this position. First, under Family Code Section 1100, "...when spouses hold property as community property, each spouse has control over the entirety" and must be deemed to own one hundred percent of the property. Secondly, in Corporations Code Section 704, the vote by one spouse of all of the community property stock, binds both spouses,

resulting in attribution of stock ownership and resultant control of the corporation to the spouse who voted. Since Warren apparently voted all of the WJF stock prior to the merger, the conclusion is that Warren had 100% ownership or control of WJF at all times.

For the reasons hereinafter explained, we respectfully disagree with Mr. _____ and reiterate our opinion stated in the Memorandum to Charles Knudsen, dated September 1, 1995, that the described transaction resulted in a change in control of WJF (JVL&CC) under Section 64(c).

At the outset, it is important to understand the operation of certain property tax concepts which may to some extent explain the divergence of viewpoints on this matter. Both Section 64, which provides the change in ownership criteria for transfers to and from legal entities, and Section 63, which sets forth the interspousal exclusion from change in ownership, were passed shortly after the enactment of Proposition 13 in 1978 as implementing statutes. In taking a position regarding the application of these statutes to a particular situation, our objective has been to maintain consistency with Article XIII A of the California Constitution, until there is new constitutional, statutory or judicial authority to the contrary. For the same reason, we generally refrain from basing any interpretation or application of these statutes on non-property tax related provisions of law that are not "in pari materia" with Article XIII A and change in ownership authorities and concepts. Unless cited or stated to be the Legislature's intent in property tax statutes, provisions in the Family Code, Corporations Code or other codes, cannot be construed to be modeled on Revenue and Taxation Code Sections 60 et seq., nor do they share the same legislative purpose of implementing Proposition 13. Thus, Family Code Section 1100 and Corporations Code Section 704 are not determinative of the change in ownership issues herein.

Based on the foregoing, the two questions under consideration for change in ownership purposes are (1) whether ownership interests in legal entities owned by spouses are treated in the same manner as interests owned by joint tenants; and (2) whether community property ownership of corporate stock results in attribution from one spouse to the other spouse, resulting in change in control under Section 64(c), where the facts indicate that one spouse voted 100% of the shares. The answer to the first question is yes, with a qualification, and the answer to the second question is no.

1. Are ownership interests in legal entities owned by spouses treated in the same manner as interests owned by joint tenants? Yes, with a broader exclusion.

From the inception of the attempts to implement Proposition 13, a major challenge for the Legislature has been to define "change in ownership." To assist in this task, the Legislature relied on assistance from an appointed group of county assessors, public and private tax counsels, Board of Equalization staff, legislative staff, and other public and private sector individuals closely involved with property tax matters, designated as the Task Force on Property Tax Administration, of the Assembly Committee on Revenue and Taxation, chaired by Assemblyman Willie Brown, Jr.

The Task Force "sought to distill the basic characteristics of a 'change in ownership' and embody them in a single test which could be applied evenhandedly," and recommended that its

general definition per Section 60 should control all transfers, both foreseen and unforeseen. (See Report of the Task Force on Property Tax Administration, Assembly Committee on Revenue and Taxation, 1979, pp.38,40.) Two of the specific statutory examples said to be consistent with the change in ownership test were tenancies-in-common and joint tenancies, which create undivided interests in land. Such treatment requires assessors to account for separate base year values on the fractional interests which are transferred at different times. The Task Force recognized, however, that because "interspousal joint tenancies" constituted the vast majority of joint tenancies in California, these should be provided for separately.

Based on the Task Force recommendation and popular demand, the Legislature placed the interspousal exclusion in its own section (Section 63) as a "deliberate carved out exception" to change in ownership. The resulting language was totally unique in two ways: (1) it "borrowed" the joint tenancy concept that for change in ownership purposes each spouse owns his/her interest in property, and (2) it simultaneously made a radical departure from the change in ownership definition by granting a broad exclusion for any transfers of such interests between spouses. In the Report of the Task Force p.44, the following explanation of the interspousal exclusion was set forth:

"The one exclusion from change in ownership which is not consistent with the 3-element definition [of change in ownership] is interspousal transfers. They are therefore provided for separately (proposed Section 63) rather than being one of the examples of exclusions under the general test. . .

"The Task Force saw no policy reason for limiting the interspousal exclusion to community property and joint tenancy interests. If, for example, a husband left separate real property to his wife by will, rather than putting it in joint tenancy with her, there seemed to be no reason why the transfer on the husband's death should have two opposite results. Thus, all interspousal transfers were excluded." (See Report of the Task Force on Property Tax Administration, Assembly Committee on Revenue and Taxation, July 1979, p.44.)

Shortly thereafter, in the formal report issued by the Assembly Revenue and Taxation Committee, entitled "Property Tax Assessment" Volume 1, October 29, 1979, on page 20, the Committee stated:

"Interspousal Transfers"

"All transfers among spouses are excluded from change in ownership, including transfers taking effect upon the death of a spouse, or transfers to a spouse for former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation. This provision overrules any other

provisions described hereafter regarding definition of a change in ownership (Section 63). [Emphasis added.]

“Without this provision certain types of property transfers, e.g., community property or joint tenancy interests would be exempt, while other property, such as separate property left by will, would be subject to change in ownership. This was the result of the exemption provided originally under SB 154. Since the blanket interspousal exclusion of AB 1488 is not consistent with the basic definition contained therein, it is set forth in a separate section.”

The fact that the interspousal exclusion treated spouses as separate “persons” (joint tenants) and then **excluded** from change in ownership **all transfers between the spouses**, (whether transfers of ownership interests in real property, or in any entity that owns real property) was cause for concern by some. Several members of the Task Force expressed the view that Section 63 was invalid.

“...because it goes beyond any conceivable meaning of ‘change in ownership’ - the only phrase in the constitutional provision. No one can seriously contend, for example, that a husband’s transfer of his separate property to his wife is not a ‘change in ownership’.” (Ehrman, Flavin, Morris & McMahan, Inc. letter, January 12, 1979, copy enclosed.)

Such concern was not reflected in the language finally included in Section 63, since after several amendments, it was further broadened. For example, the first phrase in Section 63, prior to its last amendment by Assembly Bill 152 (Stats. 1981, Ch. 1141) in 1981 stated, “Notwithstanding Sections 60, 61, 62, and 65, a change in ownership shall not include any **interspousal transfer**,...”. The new language which amended Section 63 in AB 152 in 1981, deleted the words, “Sections 60, 61, 62, and 65,” and added the words, “any other provision in this chapter,” as follows:

“Notwithstanding any other provision in this chapter, a change in ownership shall not include any **interspousal transfer**, including, but not limited to:...”

Also added by AB 152 was the language in subdivision (e) which extended the exclusion to transfers related to marital dissolution and property settlement matters, and states:

“(e) The distribution of a legal entity’s property to a spouse or former spouse in exchange for the interest of such spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.”

In recommending the broader language of AB 152 to the Senate Committee on Revenue and Taxation, the State Board of Equalization stated in its Legislative Analysis, August 13, 1981, (copy attached), that the intent was as follows:

"4. Spousal Exclusion (Section 63)

Provides that exclusion takes precedence over all other provisions of the chapter, and that the distribution of a legal entity's property (e.g., corporation, partnership) upon divorce is included within this exclusion."

"The first change is clarifying of the original intent; by formerly specifying only certain sections, the implication was that any section not so specified would overrule the spousal exclusion. This was never intended. The second change also clarifies the existing exclusion as it applies to property settlement agreements."

Shortly thereafter, the question of application arose as to what action an assessor should take regarding the ownership interests of the wife in husband's stock (and ultimately in the control of the corporation) where both held community property interests in the property at husband's death. By letter from Verne Walton on February 27, 1981, (copy enclosed), we stated that "Such a transfer would be excluded from reappraisal." Even though the shares were held solely in husband's name, the transfer of all of the shares to wife upon the husband's death was excluded from change in ownership and from change in control (Section 64(c)). Because of the basic principle in Section 63 described above, that shares and/or real property held by spouses as community property were treated as the property of each of them as separate persons, we have consistently concluded that whenever there is an acquisition or transfer of stock or other interests between spouses, no change in ownership has resulted. Thus, the basic application made in the 1981 Walton letter has been followed over the years. Subsequent advice from our staff in numerous opinion letters and letters to assessors, such as Letter to Assessors Only No. 83/17, and Letter to Assessors No. 85/33, reflects the basic principle stated in the Task Force recommendations and derived from the Legislature's intention regarding the interspousal exclusion for change in ownership purposes. The purpose of these advice letters is to properly interpret and apply the interspousal exclusion, not to explain the legal distinctions between community property and joint tenancy concepts. Thus, Letter to Assessors No. 85/33 states 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 the husband and wife take title as "joint tenants," that is, separate individuals each owning 50% of the ownership interests in question.

In the instant case, it is important to recognize that the issue is not whether interspousal exclusion applies, but whether Warren alone has control of the corporation. Beverly and Warren apparently held the shares in WJF as community property from its incorporation, leading to the conclusion (per Letter to Assessors No. 85/33) that each of them owned 50% of WJF and that neither had control. There are no facts indicating that Warren owned 100% of the shares as his

separate property or that Beverly at some later date transferred her community property shares to Warren as his separate property, giving him 100% control. If Warren did own 100% of the stock as separate property, or if Beverly had actually transferred her stock to Warren, it is not subject to debate that Warren would clearly have had control of WJF. Even though a transfer from Beverly to Warren would have resulted in a change in control of WJF under Section 64(c) which would have been excluded under Section 63, there is no question that Warren would have had more than 50% ownership or control. Without any facts establishing either 100% initial stock ownership by Warren or a 50% stock transfer to Warren from Beverly, we find no basis for reaching such a conclusion. Further, if we were to have concluded, as Mr. _____ advocates, that Warren had control simply by virtue of his community property interest, then all our previous decisions and opinions in other spousal situations where husbands and wives share more than 50% of the ownership interests in legal entities should have resulted in changes in control, effectively reversing the underlying intent of the interspousal exclusion by making the spouses a single entity rather than separate individuals. This has not been the case.

As a final note on this subject, as well as a brief digression, you are undoubtedly aware that there has been some controversy among assessors and taxpayers in recent years focusing on the application of Section 63 to transfers of stock or interests in legal entities under the particular language of the interspousal exclusion in Article XIII A, Section 2(g) of the Constitution. The express purpose of Proposition 58 which added this exclusion was, among other things, "to place the existing statutory treatment of property transfers between spouses into the Constitution." ("Analysis of Legislative Analyst," Ballot Pamphlet, Proposed Amendment to California Constitution with Arguments to Voters, Taxation [of] Family Transfers, General Election (Nov. 4, 1986), p.24.) The problem arose because the "existing statutory treatment of property transfers between spouses" provided specifically for the exclusion of "any interspousal transfer" per Section 63, however, the language in the constitutional amendment stated that "... 'change in ownership' shall not include the purchase or transfer of real property between spouses..." (Art. XIII A, Sec. 2(g).)

Some assessors have interpreted the constitutional language as a contradiction to the plain meaning of the phrase "any interspousal transfer" in Section 63, and that in case of doubt, the constitutional provision should take precedence over the statute. We believe that all of the historical evidence, as well as legal principles, establish that there is no inconsistency. First, there is no indication in the ballot pamphlet or in any of the legislative history from the authors of Proposition 58, that it would modify existing law and narrow its application to only literal real property transfers between spouses. Secondly, the interspousal exclusion in Section 63 experienced a long history (1979) prior its 1986 incorporation into the Constitution under Proposition 58. During this time, substantial clarity regarding its interpretation and application had developed, both from the advice of our staff and decisions made by assessors, that established a standard treatment for any transfers of interests in legal entities between spouses as excluded from change in ownership. Finally, court decisions dealing with similar problems in property tax matters have held that the terms used in a constitutional amendment must be construed in the light of their meaning at the time of adoption of the amendment. In Larson v. Duca (1989) 213 Cal.App.3d 324,329, the court dealt specifically with Proposition 58 and stated,

“In interpreting constitutional measures enacted by the voters, we must also follow the rule that ‘the electorate would be deemed to know’ the state of the law prior to the enactment. ‘The adopting body is presumed to be aware of existing laws and judicial construction thereof.’ [citation]”

Thus, in our view there is no inconsistency or contradiction of terms between the language in Section 63 and in Art. XIII A, Sec. 2(g). The constitutional provision merely restates in different phraseology the same concept expressed the statute.

2. Does community property ownership of stock result in attribution from one spouse to the other spouse triggering a change of “control” per Section 64(c)? **No.**

It has been and continues to be our position with regard to the proper interpretation of Section 64(c) and Property Tax Rule 462.180 (c) and (d), that a change in ownership of corporate real property requires one person or entity to obtain more than 50% of the voting stock of the corporation without attribution of stock ownership. The principle of non-attribution of stock was a decided recommendation at the outset of the Task Force discussions. The result was that of the many bills introduced for purposes of implementing Proposition 13, none successfully passed when they added any attribution rules to the change in ownership provisions. The reason is that the foundational principle underlying the change in control concept (Section 64(c)) rests on the idea of looking at each person and entity that obtained an interest in the acquired corporation to determine if any single one of them received more than 50%.

The effect of this principle was carefully considered by the Legislature at the time the change in ownership provisions were being adopted. With regard to Section 64(c) specifically, the Legislature stated:

“This provision was enacted out of a concern that, given the lower turnover rate of corporate property, mergers or other transfers of majority controlling ownership should result in a reappraisal of the corporation’s property - an effort to maintain some parity with the increasing relative tax burden of residential property statewide, due to the more rapid turnover of homes. It was also a trade-off for exempting transfers among 100% wholly-owned corporations.” (1 Assembly Revenue and Taxation Committee Representations on Property Tax Reassessment, October 29, 1979, p.27.)

Accordingly, the Legislature provided under subdivision (a) of Section 64 that the transfer of a partnership or corporate interest is not a change in ownership. Only if an acquisition by one person or one entity of more than 50% of the corporate stock occurs, is there a change in corporate control, which under Section 64(c), is considered to be a change in ownership of all of the real property owned by the corporation (since a new shareholder is in control).

Consistent with legislative intent, we instructed assessors in Letter to Assessors No. 80/39, March 7, 1980, p.2 (copy enclosed) that where two individuals (whether tenants in common, joint tenants, or spouses) acquire 15% and 40% of the voting stock of a corporation respectively, there is no basis for concluding that control by the corporation has been transferred to a single person or entity. We noted that the only exception to the rule of no attribution is based on the provision in Section 25105 and Rule 462.180 (c) and (d) where the voting stock owned by one corporation may be attributed to the individual or entity owning a controlling interest in that corporation. Under this exception, if 40% of the voting stock of X Corporation is transferred to individual Y, and another 15% of the voting stock of X Corporation is transferred to Y's wholly owned corporation ("Y Corporation"), then the X Corporation stock acquired by Y Corporation would be treated as indirectly owned (attributed) by individual Y for purposes of Section 64(c). Individual Y would have acquired more than 50% ownership of the X Corporation stock (40% directly and 15% indirectly), resulting in a change in ownership of the X Corporation real property.

Based on the foregoing, there is no basis for attributing Beverly's stock in WJF to Warren as Mr. Bradus argues. Under his view, since Warren actually voted 100% of the shares in WJF prior to the merger, ownership or control of WJF should be attributed to Warren. We do not agree. This is tantamount to treating every occasion of a vote by one person of the more than 50% of the shares, as a "transfer" of control of the corporation for change in ownership purposes. Not only does such a view contradict legislative intent, but as followed, it would greatly expand the Section 64(c) application of change in control. Every time one spouse voted the shares for both spouses, there would be a change in control. We have never advised that a change in control occurred because one spouse voted the shares for both. The fundamental precept of Section 64(c) requires the **purchase or transfer** of more than 50% of the corporate stock, necessitating an actual "transfer" for change in ownership purposes.

Whether or not an actual transfer of stock and resultant corporate control has occurred is a factual question, resolved by examining all of the evidence. We have historically advised that the test employed by the Legislature in Section 64(c) and Section 25105 requires focusing on the majority shareholder who owns or controls more than 50% of the voting stock and concluding that such shareholder's voting power is exercised in a manner which binds and controls the interests and decisions of the minority shareholder(s). Thus, where the stock is owned by two individuals, one must clearly own or control more than 50% of the voting stock in order to trigger Section 64(c). Where two individuals own 50% each, the fact that individual A consistently votes the shares of individual B, does not make A the majority shareholder, since B may at any time exercise his/her voting power of 50% of the shares. B's 50% interest in the corporation and B's 50% voting control over corporate affairs remains vested in B and apart from a specific transfer event, has not been transferred to A for change in ownership purposes.

As to the ownership and transfers of shares in WJF and in all of the corporations in this case, the January 19, 1996 letter from Mr. _____ states that the 550 WJF shares and the 33 BJJ shares prior to the merger were owned by Warren and Beverly as community property. The 276 CLF shares and the 276 RRF shares were owned solely by Warren as Trustee. Following the merger into WJF, Warren held a total of 552 shares as Trustee for the two trusts, and Warren and

Beverly owned 583 shares as community property. Thus, there is no question that as the result of the merger there was a transfer of control of WJF, in that Warren acquired more than 50% of the voting stock of WJF when the shares he owned as his community property interest and the shares he was entitled to vote as the Trustee of the RRF Trust and the CLF Trust are aggregated. Apart from the existence of some additional facts which have not been submitted for our review, such a conclusion seems inescapable. In addition, the interspousal exclusion in Section 63 is not applicable under the circumstances of this merger, since Warren's acquisition of control of WJF was obtained from the stock transfer of two corporations (RRF and CLF), not from shares transferred by Beverly. As previously discussed, the interspousal exclusion applies only to transfers between spouses, not to transfers between a spouses and corporation(s).

The views expressed in this letter are, of course, advisory only and are not binding upon your office or on the assessor of any county.

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

Sincerely,



Kristine Cazadd
Tax Counsel

KEC:ba
Attachments

cc: Mr. James Speed, MIC:63
Mr. Richard Johnson, MIC:64
Mr. Charlie Knudsen, MIC:64
Ms. Jennifer Willis, MIC:70
Mr. Larry Augusta

February 27, 1981

Honorable Kenneth M. Stedman
Lassen County Assessor
Courthouse, Room 104
Susanville, California 96130

Dear Ken:

In your letter of January 28, 1981 you asked what action would be called for in the following situation. A husband and wife form a wholly owned corporation. For reasons unknown, the stock was held only in the husband's name. The husband dies and the wife receives the stock through probate.

Such a transfer would be excluded from reappraisal. It appears that the property was community property and that the stock would also be community property, even though held only in the husband's name.

If you have any further questions regarding this, please feel free to contact us further.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

YH:sk

cc: Mr. Glenn Rigby

(Prepared by: Gene Palmer)



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 Controller, Sacramento

DOUGLAS D. BELL
 Executive Secretary

No. 80/39

March 7, 1980

TO COUNTY ASSESSORS:

CHANGE IN OWNERSHIP - CORPORATE STOCK TRANSFERS

Legislative implementation of Proposition 13 provides that with one enumerated exception transfers of ownership interests in corporations, partnerships and other undesignated similar legal entities are not to be considered changes in ownership prompting reappraisal of real property owned by the entity, the interest in which has transferred. The exception, which is contained in Section 64(c) of the Revenue and Taxation Code, has been the source of a number of inquiries because of the reference to director-owned shares, to wit:

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

Obviously, the exclusion from consideration of director-owned shares could be read to apply to directors of either the acquiring company or the acquired company. If the language is viewed as meaning directors of the acquired corporation, it would result in what we regard as an unwarranted result. For example, if all the voting stock in the Widget Corporation is owned by its only directors A, B, and C and they collectively sell all of their shares to the Blodget Corporation, no change of ownership would be deemed to have occurred even though ownership and control, as defined in Revenue and Taxation Code Section 25105, of all the Widget assets have been obtained by the buyer. The logic of such a result escapes us and we can find no legislative history to indicate such an interpretation was intended.

Section 64(c) speaks mainly of an acquiring person or corporation. It is our view, therefore, that the director referred to in the section would be the director of an acquiring corporation. The purpose of the exclusion would be to avoid adding all shares owned by both the corporation and the shares owned by the director of that corporation together to determine if control is gained of the acquired corporation. Such an interpretation recognizes the separateness of the corporation and its director and does not charge the corporation or the director with the ownership or control of property they do not, in fact, own or control simply because of their relationship to one another. This interpretation is also consistent with the legislative

history in Section 64(c) because prior to the amendments in AB 1019, the section referred only to corporations that acquire control of another corporation.

When looking at the acquired corporation, all stock of that corporation, held by directors or others, must be totaled when purchased by a single person or entity to determine if control has transferred. If two individuals were to separately purchase 15 percent and 40 percent respectively of the voting stock in a corporation, there would be no basis for concluding that control by the corporation has been transferred to a single person or entity. On the other hand, if an individual purchases 15 percent of a corporation's stock and a corporation purchases 55 percent of that corporation's stock, it is the second transfer that comes under Section 64(c). It is important to remember whenever there is a change in ownership of a corporation all of the corporate property is reappraised regardless of the percentage of stock that was acquired and resulted in obtaining of control; e.g., if A owns 45 percent of a corporation's stock and then obtains 10 percent more, all corporate taxable assets would be subject to reappraisal.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

VW:sk



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Executive Secretary

No. 85/33

March 5, 1985

TO COUNTY ASSESSORS:

CONTROL AND OWNERSHIP OF LEGAL ENTITIES
ACQUIRED AS "COMMUNITY PROPERTY"

This letter is to inform you that it is 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 husband and wife take title as "joint tenants." See County Assessors' Only Letter No. 83/17, dated July 15, 1983; OWNERSHIP INTERESTS IN ENTITIES HELD BY SPOUSES AS JOINT TENANTS (copy enclosed).

Sincerely,

A handwritten signature in cursive script that reads "Verne Walton".

Verne Walton, Chief
Assessment Standards Division

VW:gr

Enclosure



STATE BOARD OF EQUALIZATION

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Executive Secretary

CAO 83/17

July 15, 1983

TO COUNTY ASSESSORS ONLY:

OWNERSHIP INTERESTS IN ENTITIES HELD BY SPOUSES
AS JOINT TENANTS

The question recently arose as to the proper treatment of a situation in which a husband and wife acquire ownership interests in a legal entity as joint tenants. The Board's legal staff has advised that a husband and wife holding ownership interests in legal entities as joint tenants are to be considered separate individuals, each owning 50% of the ownership interests in question. The fact they are married cannot be used to attribute the ownership of one spouse to that of the other so as to find one spouse has directly and indirectly acquired more than 50% ownership in a legal entity.

The estate of joint tenancy presumes that all of the joint tenants own equal undivided shares. For example, two joint tenants each own 50%, three joint tenants each own 33-1/3%, four joint tenants each own 25%. There will always be at least two joint tenants to share equally in the ownership of the property owned by the joint tenants. Thus, if all the outstanding voting stock of a corporation is acquired by a husband and wife as joint tenants, they each own 50% of voting shares equally, not more than 50%. Shares owned by one spouse cannot be attributed to the other. Consequently, while all of the shares have been transferred, and ownership of the shares has changed, no single person has acquired "control" within the meaning of Revenue and Taxation Code Section 64(c). The transaction would be excluded from reappraisal by Section 64(a).

Sincerely,

Verne Walton, Chief
Assessment Standards Division

VW:ga