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State of California

Board of Equalization
Legal Division

Memorandum

To : Mr. Gene Mayer

Date: April 19, 1994

From : Kristine Cazadd

K. Cazadd

Subject: **Change in Ownership Reporting - State Assesses Not Subject to Sections 480 - 480.3.**

This is in response to your request to Mr. Richard Ochsner for our opinion concerning the change in ownership reporting requirements for state assesses under the current provisions of Sections 480 - 480.3. Specifically, the questions presented by the taxpayer are: 1) whether the letter issued to all state assessees on February 5, 1981, by Mr. Neil Jennings, Chief of the Valuation, remains correct in concluding that "state assessees are no longer required to file change in ownership statements with the county recorder or county assessor," and should therefore be reissued, and 2) whether under Section 480.3, a state assessee (e.g. Citizens Utilities Company) may be required to file the preliminary change of ownership report with the county recorder or pay a fee to $20 in lieu thereof.

For the reasons hereinafter explained, we conclude that because Sections 480 -480.2 mandate that **only** a person or legal entity acquiring ownership or control of real property or mobile homes **subject to local property taxation** is required to file a **change in ownership statement** the basic premise in Mr. Jennings' letter remains correct; however, under Section 480.3, enacted after the date of Mr. Jennings' letter, **all transferees, including state assessees**, may be required to file a **preliminary change in ownership report** or pay a $20 recording fee in lieu thereof.

Filing Change in Ownership Statements

Although the underlying premise in Mr. Jennings' letter remains correct, the reasons given have been abrogated by subsequent changes in the law. The legal authority cited in Mr. Jennings' letter for removing state assessees from the requirement of filing the change in ownership statement was exclusively related to new legislation enacted at that time and has since been repealed. SB 1260, Chapter 1081, Statutes of 1980, granted a statutory exemption to state assessees by means of adding subdivision (j) to Revenue and Taxation Code Section 480. Subdivision (j) provided state assessees with the

following specific exception from filing change in ownership statements under Section 480, as it then existed, and stated in pertinent part:

> (j) In the case of a change in ownership where the transferee is not locally assessed, no change in ownership statement is required.
>
> * * *

Shortly before subdivision (j) was enacted in September 1980, however, previous legislation had been added in the form of SB 1004, Statutes of 1979, Chapter 1180, which also included language removing state assessees from the filing requirements under Section 480. This language embodied an amendment to the first sentence of Section 480, which stated in the following (underlined) portion:

> "Whenever any change in ownership of real property <u>or of a mobilehome subject to local property taxation</u> occurs, the transferee shall file a signed change in ownership statement in the county where the real property or mobile home is located..."

The foregoing language basically constituted another way of stating the same exception for state assesses. This provision (subdivision (j)) took effect on January 1, 1980. Thereafter, the Legislature eliminated the apparent redundancy between these provisions through the annual "cleanup" bill in 1981, for Proposition 13 implementing statutes. In this bill, the procedures for filing change in ownership statements were again amended, and the entirety of Section 480, including subdivision (j), was repealed. The new provisions in AB 152, Statutes of 1981, Chapter 1141, added Section 480, 480.1, and 480.2, each of which incorporated the language quoted above from Statutes of 1979, Chapter 1180, stating

> "Whenever any change in ownership of real property or of a mobilehome **subject to local property taxation** occurs, the transferee shall file a signed change in ownership statement...".

Although Sections 480, 480.1, and 480.2 have been amended and added to since that time, the condition precedent to filing a change in ownership statement, i.e., the exception for state assesses that the real property or mobile home undergoing change in ownership must be **subject to local taxation**, has remained unchanged. This language is included in the opening sentence of Section 480 and the first sentence of the "Important Notice" therein, and is in the first sentence of the

"Important Notice" provisions in Sections 480.1 and 480.2. Therefore, based upon the current language in Sections 480 - 480.2, we conclude that **the filing of a change in ownership statement** referred to in each of these sections, is **not** required for state assesses.

Preliminary Change of Ownership Reports

The remaining issue, however, concerns the requirement to file the preliminary change of ownership report under Section 480.3. Chapter 1237 of the Statutes of 1984 (AB 3132) added Sections 480.3 and 480.4 to the Revenue and Taxation Code, requiring preliminary change in ownership reports (PCOR's) to be filed by "transferees of real property" recording documents evidencing changes in ownership occurring on or after July 1, 1985. (Subdivision (g) of Section 480.3.) In the absence of any language clearly limiting its requirements to only transferees **"subject to local taxation"** or otherwise exempting state assessees, some county recorders have required **all transferees**, both state and locally assessed, to file preliminary change in ownership reports or pay the $20 recording fee in lieu thereof. It is our conclusion that the language in Sections 480.3 - 480.4 provides county recorders with the authority to do so.

As originally adopted, these provisions did **not** include the language used in Sections 480 - 480.2 that the filing requirement applied whenever transferees **subject to local assessment** recorded documents evidencing changes in ownership. The particular question regarding which transferees might be **exempt** from filing PCOR's was raised in a memo written by Mr. Richard Ochsner on July 25, 1985, (copy attached). In his discussion as to whether a county recorder could require the transferee of a tax collector's sale or a tax-exempt entity to file a PCOR or pay the $20 fee in lieu thereof, Mr. Ochsner stated on page 2, "the question [tax sale transferees, state assessees, etc.] seems to be a legitimate problem which was not contemplated at the time these provisions were drafted."

Thereafter, in 1986, the Legislature did add an exemption to the PCOR filing requirement with regard to transferees at tax sales (see Section 480.3, subdivision (e)), but did not include any language which would have exempted state assessees. This silence as to state assessees was retained when both Sections 480.3 and 480.4 were recently amended and extended without substantive change to bypass the original 1991 sunset date. Thus, having ample opportunity to amend the provisions or to at least conform the language in Section 480.3 to the phrase in Sections 480 - 480.2, that the PCOR filing requirement be applicable **only** to transferees **subject to local assessment**, the

Legislature did not do so, nor, to our knowledge, were any bills proposed for this purpose.

The generally accepted interpretation of a statute when the Legislature has not acted is that when an exclusion or exception is not expressly stated therein, such exclusion or exception is not intended and therefore, should not be implied. Certainly an argument could be made that the exclusion for state assessees was merely overlooked, for there is some evidence which manifests the Legislature's intent to apply the provisions of Section 480.3 and 480.4 to locally assessed transferees only. For example, these provisions were clearly supplementary to Sections 480 - 480.2, and the express intention of the Legislature in enacting them was to establish an additional method for assessors to obtain information upon recordation as to when a change in ownership occurred, rather than waiting until 45 days following the change in ownership per Sections 480 -480.2.

This intention was declared in the purpose statement of AB 3132 (Molina) as follows:

> Existing law provides for the filing of a change in ownership statement containing specified information, including a prescribed notice, whenever a change in ownership of real property or a mobilehome **subject to local property taxation** occurs. The statement is required to be filed with the recorder together with any transfer document evidencing a change in ownership which is filed with the county recorder for recordation or with the assessor within 45 days of the date of the change in ownership if the transfer document is not filed for recordation.
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> This bill would impose a state-mandated local program by requiring the assessor and the recorder to make available, without charge and upon request, preliminary change in ownership reports, in a specific form, which transferees of real property may complete and file concurrently with the recordation of documents evidencing a change in ownership.

The Legislature further clarified this purpose in subdivision (d) of Section 480.3 which states that the PCOR is to be filed in addition to, and not in lieu of, the change in ownership statement in Sections 480 - 480.2. (See Section 480.3, subdivision (d).) Thus, it can be argued that if the purpose of Section 480.3 was to augment and facilitate the change in ownership reporting procedures already in place under Section

480 - 480.2, and not to alter the transferees who must file, one may reasonably conclude that the same transferees (locally assessed) would be required to file PCOR's as are required to file change in ownership statements.

However, we believe there is an equally viable reason why the Legislature may have omitted the language excluding state assessees from the PCOR filing requirements in Sections 480.3 and 480.4. Historically, since the enactment of Proposition 13, the California Assessors Association urged the adoption of a measure requiring the filing of change in ownership information upon the recordation of a transfer (or prohibiting recordation unless documents are accompanied by a change in ownership statement). The recommendations made by the Task Force on Property Tax Administration in 1981 were to require every transferee to file change in ownership information at the time of recordation in order to solve two problems assessors had been experiencing: 1) change in ownership statements under Section 480, required to be filed with the assessor within 45 days after change in ownership, were generally not filed until the assessor made the request, resulting in assessment delay and increased administrative costs; and 2) in order to properly administer and produce the revenues generated by the new supplemental assessment roll, timely filing of change in ownerships was essential.

Moreover, the Legislature apparently weighed the burden on all transferees having to file PCOR's against the assessors' needs for additional information, per discussions in the Assembly Committee on Revenue and Taxation prior to the adoption of Sections 480.3 and 480.4. (See Assembly Committee on Revenue and Taxation, AB 3132, April 23, 1984, attached.) Requiring all transferees to file a PCOR with the county recorder (or paying a $20 recording fee in lieu thereof) at the time of the transfer was not considered to be overly burdensome on the transferees, in view of the fact that it avoided mandatory reporting before recordation could be completed. The benefits of the PCOR requirement were considered to be substantial in terms of promoting efficient and less costly property tax administration, and for this reason, the Board supported the legislation. (See Letter to Governor Deukmejian from Douglas D. Bell, September 4, 1984, attached.)

Based on the foregoing, it does not appear that there was a legislative intent to exempt state assessees from the burden of filing PCOR's, for then assessors would, to that extent, lose control of their ability to track such changes in ownership. As noted, the idea behind the filing of PCOR's was to assist, not hinder, the performance of the assessor's duties. While in

most cases state assessees are not subject to Proposition 13 and change in ownership requirements, there are exceptions, and it is the assessor, not the state assessee, who is charged with the responsibility of determining when and where a change in ownership has occurred. The assessor must have a method in place for being informed of any state assessees who acquire real property subject to local assessment; as, for example, when a state assessee, such as a company acquiring pipeline lands and rights-of-way, is subject to local assessment with regard to the real property transferred.

In summary, with regard to the first question as to whether state assessees remain exempt from filing **change in ownership statements**, under current law (Sections 480, 480.0 and 480.2), our answer is affirmative; however, we suggest that a new letter be issued explaining the legislative changes repealing subdivision (j) of Section 480 and adding the language to Sections 480 - 480.2 that the change in ownership must be **"subject to local taxation."** With regard to the second question as to whether from state assesses are exempt from **filing PCOR's**, our answer is negative, since there is no language expressed in Sections 480.3 or 480.4 providing for such exclusions. We suggest that state assessees be advised accordingly.

KEC
Attachments

cc: Mr. John Hagerty, MIC:63
Ms. Jennifer Willis, MIC:70

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