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June 8, 2007

Re: Change in Ownership and Escape Assessments

Dear Ms. ---:

This is in response to a letter from Ms. --- dated November 20, 2006, addressed to Tax Counsel Dana Flanagan-McBeth and Senior Tax Counsel Carole Ruwart. In an e-mail message dated January 25, 2007, Ms. --- requested that we direct all future correspondence regarding this inquiry to you. In her original letter, Ms. --- asked for our opinion concerning whether transfers of interests in two parcels of real property located in Long Beach made in 1951, 1952, 1972, and 2003 were changes in ownership subjecting the properties to reassessment. As discussed more fully herein, the transfers occurring in 1951, 1952, and 1972 were not changes in ownership. However, the 2003 real property transfers resulted in a 25 percent change in ownership of the properties.

Background and Facts

The real property parcels described in Ms. ---'s letter consist of two small vacant, undeveloped industrial lots located in Long Beach (properties or Long Beach properties) that were first purchased by M--- S--- (MS) for \$10.00 in 1926. MS owned the property until her death in 1951. We understand the properties to have been transferred in the following manner:

1. In 1951, MS died and transferred a 50 percent interest to her grandson, W--- C. S---, Jr. (WCS), and a 50 percent interest to her son, R--- C--- S--- (RCS).
2. In 1952, RCS died and his 50 percent interest was transferred to his wife, I--- J S--- (IJS).
3. In 1972, IJS died and her 50 percent interest was transferred 25 percent to her daughter S--- G. P--- (SGP), and 25 percent to another daughter, P--- J. T--- (PJT).
4. In 2003, SGP died and transferred, by will, her 25 percent interest to her nephew, R--- T--- (RT).

Thus, currently, the Long Beach properties are owned 50 percent by WCS, 25 percent by PJT and 25 percent by RT. It is our understanding that preliminary change in ownership statements were filed for both lots, after the 2003 transfers, with the Los Angeles County assessor on December 29, 2006, and that no other deeds or recordings were made evidencing the 2003 transfers.

Law and Analysis

Article XIII A of the California Constitution (Proposition 13), which instituted the current change in ownership rules, was enacted in 1978. A change in ownership is defined as "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." (Rev. & Tax. Code, § 60.) When an interest or portion of real property changes ownership, only the interest or portion transferred is reappraised. (Rev. & Tax. Code, § 65.1, subd. (a).) As relevant herein, upon a change in ownership, the owner must file a change in ownership statement with the county assessor within 45 days. (Rev. & Tax. Code, § 480, subd. (e).)

An assessor is required to issue an escape assessment on discovery of any property belonging on the local roll that has escaped assessment. (Rev. & Tax. Code, § 531.) Property is considered to escape assessment each year until the assessment is discovered and corrected. (See Letters to Assessors 2002/014.) Thus, an assessor, upon discovery of property that escaped assessment, is required to value the property upon discovery as of the appropriate lien date, enroll the correct value on the roll being prepared, process any necessary corrections to the current roll, and process appropriate escape assessments for prior years that fall within the statute of limitations. (*ibid.*) Revenue and Taxation Code¹ section 532, subdivision (b), provides for an 8-year statute of limitations for escape assessments for unrecorded changes in ownership. Subdivision (b)(2) of section 532 provides that:

Any assessment resulting from an unrecorded change in ownership for which either a change in ownership statement, as required by Section 480 or a preliminary change in ownership report, as required by Section 480.3, is not timely filed with respect to the event giving rise to the escape assessment or underassessment shall be made within eight years after July 1 of the assessment year in which the property escaped taxation or was underassessed. For purposes of this paragraph, an 'unrecorded change in ownership' means a deed or other document evidencing a change in ownership that was not filed with the county recorder's office at the time the event took place. (Emphasis added.)

Based on the facts provided in Ms. ---'s letter, the real property transfers that occurred in 1951, 1952, and 1972 are not changes in ownership as defined by section 60 since they took place prior to the passage of Proposition 13. The 2003 transfers from SGP to RT, SGP's nephew, however, are changes in ownership under section 60, and no exclusion from change in ownership appears to apply. Since the transfers were of a 25 percent interest in the properties, a change in ownership of a 25 percent interest in the properties occurred. (See Rev. & Tax. Code, § 65.1, subd. (a).)

¹ All section references are to the Revenue and Taxation Code unless otherwise specified.

You have indicated that preliminary change in ownership statements were filed in December 2006. However, since the transfers that gave rise to the change in ownership occurred in 2003, these statements were not timely filed pursuant to section 480, and thus, the applicable statute of limitations is eight years after July 1 of the assessment year in which the property escaped taxation. (Rev. & Tax. Code, § 532, subd. (b)(2).) Because property is considered to escape assessment each year the change in ownership remains undiscovered, effectively, the assessor may issue escape assessments eight years prior to the year in which the change in ownership is discovered.

Furthermore, section 531.2, subdivision (b) authorizes the board of supervisors to add interest to any escape assessment resulting from the failure to file a change in ownership statement as required by section 480. The interest is calculated pursuant to section 506, from the date the tax would have become delinquent if the tax had been timely assessed, to the date the additional assessment is added to the assessment roll. Finally, as relevant herein, escaped real property is not subject to penalties unless the assessor has requested, and the taxpayer has not provided within 45 days, the change in ownership statement required in section 480. (See Rev. & Tax. Code, § 482.) Since the assessor has not made such a request in this case, an escape assessment made as a result of the 2003 transfers will not be subject to penalties.

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,



Richard S. Moon
Senior Tax Counsel

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cc:

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