



STATE BOARD OF EQUALIZATION

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Executive Director

January 28, 2015

Ms.

Re: *Filing of Form BOE-100-B, Statement of Change in Control and Ownership of Legal Entities*
Assignment No.: 14-310

Dear Ms. _____ :

This is in response to your request for a legal opinion regarding whether the filing of *Form BOE-100-B, Statement of Change in Control and Ownership of Legal Entities* (Form 100-B) is required when an individual transfers her interest in a legal entity into her revocable living trust. You state that based on the Board of Equalization's (Board's) "Legal Entity Ownership Program (LEOP) – Exclusion from Reassessment" web page, it appears that a transfer of entity interest from an individual to his or her revocable living trust would require the filing of a Form 100-B. As explained below, we disagree with that conclusion. Because transfers of legal entity interests by a trustor to a trust in which the trustor-transferor is the sole present beneficiary do not result in a change in ownership of any property owned by the entity, a Form 100-B is not required to be filed.

Law and Analysis

Article XIII A, section 2 of the California Constitution requires the reassessment of real property upon a "change in ownership," unless an exclusion from change in ownership applies. A change in ownership is defined in Revenue and Taxation Code¹ section 60 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."

Section 64, subdivision (a) provides that a transfer of ownership interests in a legal entity does not constitute a transfer of the real property held by the entity, and thus does not constitute a change in ownership of the real property of the entity. However, section 64, subdivision (c)(1) provides that:

¹ All statutory references are to the California Revenue and Taxation Code unless otherwise indicated.

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 . . . 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.

In addition, section 64, subdivision (d) provides:

If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in that legal entity immediately after the transfer shall be considered the "original co[-]owners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original co[-]owners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

Sections 480.1 and 480.2 set forth the circumstances under which a Form 100-B must be filed. Section 480.1, subdivision (a) provides that whenever there is a change in control of a corporation, partnership, limited liability company, or other legal entity as defined in section 64, subdivision (c)(1), the person or legal entity acquiring control of the legal entity must file a Form 100-B with the Board within 90 days from the date of the change in control. Section 480.2, subdivision (a) requires a Form 100-B be filed whenever more than 50 percent original co-owner shares of any corporation, partnership, limited liability company, or other legal entity, as defined in section 64, subdivision (d), have been transferred.

Because trusts are not considered separate entities for California property tax change in ownership purposes, present beneficial ownership in a trust corpus is determined by disregarding the trustee's legal title, and the owner of the present beneficial interest in the trust corpus is considered to be the trustor of a revocable trust and the present beneficiary of an irrevocable trust. (Rev. & Tax. Code, §§ 60, 62, subd. (d); Property Tax Rule² (Rule) 462.160, subd. (b)(2); *Reilly v. City and County of San Francisco* (2006) 142 Cal.App.4th 480.) This is referred to as "looking through the trust." (Property Tax Annotation³ 220.0377 (June 19, 2012).)

² All references to Property Tax Rule or Rules are to sections of title 18 of the California Code of Regulations.

³ Property tax annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State Board of Equalization's Property Tax Law Guide. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

When legal entity ownership interests are transferred to a revocable trust, it is necessary to "look through" the trust to identify the beneficial owner of the legal entity interests. Since the owner of a revocable trust is the trustor, there is no transfer of beneficial ownership when a trustor transfers legal entity ownership interests into her revocable trust. This is confirmed by Rule 462.160, which states that any transfer of a legal entity interest by a trustor to either a revocable trust, or an irrevocable trust in which the trustor-transferor is the sole present beneficiary, does not constitute a change in ownership of any property owned by the entity. (Rule 462.160, subds. (b)(1)(C) & (b)(2).) Thus, neither section 64, subdivision (c)(1) nor section 64, subdivision (d) can be triggered, and there is no Form 100-B filing requirement pursuant to section 480.1 or section 480.2. In sum, because transfers to qualifying trusts cannot, by definition, trigger either subdivision (c)(1) or (d) of section 64, a Form 100-B is not required to be filed.⁴

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/ Leslie Ang

Leslie Ang
Tax Counsel

LA:yg

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cc: Honorable Marc C. Tonnesen
President, California Assessors' Association
Riverside County Assessor

Mr. Dean Kinnee MIC:64
Mr. Benjamin Tang MIC:64
Mr. Todd Gilman MIC:70

⁴ This is in contrast to situations in which a change in ownership occurs, but qualifies for an exclusion from reassessment. For example, when a transfer is excluded from change in ownership under section 62, subdivision (a)(2), the filing of a Form 100-B is required.