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J N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)

(916) 445-4982

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No. 83/20

February 18, 1983

TO COUNTY ASSESSORS:

AMENDMENTS TO CHANGE IN OWNERSHIP
AND TAXPAYER REPORTING STATUTES

Two recent pieces of legislation which affect the change in ownership and taxpayer reporting statutes were signed by the Governor in September. These bills were Assembly Bill 2718 and Assembly Bill 3382 which were, respectively, Chapters 911 and 1465 of the Statutes of 1982. The former was enacted as an urgency statute while the latter was enacted with an effective date of January 1, 1983. Further complicating the situation, the two bills were double-joined together for purposes of enactment thus creating a conflict. Seeking resolution of the conflict, our legal staff requested an opinion from the office of the Legislative Counsel. The resulting opinion is that all the amendments made by these bills are prospective from January 1, 1983 which is the effective date of the latter enacted Assembly Bill 3382. This is to say that they would only apply to changes in ownership occurring on or after January 1, 1983 and not those occurring between March 1, 1975 and December 31, 1982.

Amendments to Revenue and Taxation Code Section 62

Subsections (l) and (m) were added to Section 62 by this legislation. Subsection (l) is basically a codification of the position set forth in subsection (k) of Rule 462 (e.g., transfer of a security interest and deed presumptions). Subsection (m), on the other hand, is a new exclusion from change in ownership applying to the transfer, as a result of a court order or judicial decree, of an "eligible dwelling unit"--principal place of residence of the transferee(s) before and after transfer--to minor children or between minor siblings due to the death of the parents.

Also amended was subsection (a) of Section 62. This section was divided into two parts. Subdivision (a)(1) speaks to transfers of real property, as generally evidenced by recordation of a deed, between co-owners (i.e., tenants-in-common and joint tenants). Subdivision (a)(2), on the other hand, refers to transfers of interests in real property--whether represented by stock, partnership interest, or

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otherwise--between an individual or individuals and a legal entity or between legal entities. The transfer of such interests in real property are excluded so long as the proportional ownership interests remain the same in each and every piece of real property before and after transfer.

EXAMPLE: Corporation A owns Blackacre and Whiteacre, each of equal value. X and Y are each 50 percent shareholders. Upon dissolution of Corporation A, X and Y receive a 1/2 undivided interest in both Blackacre and Whiteacre. This transfer is excluded under Section 62 (a)(2), whereas a transfer of Blackacre to X and Whiteacre to Y upon dissolution of Corporation A would not be, since the proportional ownership interests in each property is not the same before and after the transfer.

Subsection (a)(2) now provides that subdivision (b) of Section 64 is controlling over this section. For example, a transfer of real property from Corporation X to its wholly owned subsidiary, Corporation Y, would be excluded under Section 64(b)--transfer of real property among members of an affiliated group. The reasoning behind this is that Section 64(b) is a more specific exclusion and, therefore, is controlling. Since the transfer is excluded under Section 64(b) rather than Section 62 (a)(2), there are no "original co-owners" interests created; thus, a change in ownership would not be triggered under Section 64(d).

Change in Ownership--Legal Entities

Subsection (b) of Section 64 was amended by the deletion of the term "by merger or consolidation." This was done as a clarification and is consistent with the administrative practice that all Section 368 reorganizations qualify for the exclusion.

Subsection (d) of Section 64 has been substantially amended. This section is operative only for property that is transferred on or after March 1, 1975 to a legal entity in a transaction excluded from change in ownership under Section 62 (a)(2). Insertion of the March 1, 1975 date makes it clear that this section does not apply to property transfers occurring prior to that date. The reference to Section 65 has been deleted, and the section now specifies that "the property which was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised."

EXAMPLE: Corporation X owns properties A, B, and C. The properties have been owned by Corporation X since before March 1, 1975. In June of 1976 John Doe, who owns 100 percent of the stock of Corporation X, transfers property D from himself to Corporation X.

John Doe is sole owner of property D and sole stockholder of Corporation X; therefore, the transfer is excluded under Section 62(a)(2)--for the 1981-82 assessment year and thereafter. John Doe is an "original co-owner in regard to property D only." In October of 1982 John Doe sells to each of three separate people 20 percent of the voting stock of Corporation X. This constitutes a change in ownership of property D since more than 50 percent of the original co-owner's interests has transferred. Properties A, B, and C, however, have not changed ownership because they are still owned by Corporation X, and there has been no "change in control" of Corporation X (i.e., no person or entity has obtained ownership of more than 50 percent of the voting stock). John Doe and the three new stockholders are the new original co-owners in regard to property D only.

Subdivision (d) was further amended to provide that if there is a change in control of a legal entity (i.e., ownership of more than 50 percent of the ownership interests in the entity) then the transaction is subject to reappraisal as provided in subdivision (c) rather than subdivision (d). In the example above, if the stock had been purchased by one person or entity instead of three, there would have been a change in control of Corporation X (i.e., one person owning 60 percent of the voting stock) and all the real property--A, B, C, and D--would have been reappraised. In this event, there would no longer be any original co-owners.

Change In Ownership Reporting

Subdivision (e) of Section 64 was also amended to gather information relative to changes in ownership occurring under subdivision (d) as well as subdivision (c). This information is reported on the Franchise Tax Board returns for partnerships, banks and corporations (except tax exempt organizations). The Franchise Tax Board will furnish the State Board of Equalization with specific information as provided. Our Legal Entity Ownership Program will request information from the entities and, in turn, inform you of any changes in ownership of which we became aware.

Abatement of Penalties

Section 483 (b) was amended to provide that a county board of supervisors may adopt a resolution whereby the penalty for failure to file a change in ownership statement may be abated if the assessee files the change in ownership statement no later than 60 days after the date on which the assessee is notified of the penalty. Also, the provisions of previous Section 483 (b) are now in Section 483 (c).

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Probate Code Amendment

Assembly Bill 3382 also amended Section 600 of the Probate Code. This section now states that the administrator or executor is required to file a change in ownership statement and sets forth the conditions for filing. This amendment will serve to notify executors and administrators of the change in ownership filing requirements under Sections 480 (b), 482, and 482.1 of the Revenue and Taxation Code.

Copies of these pieces of legislation are enclosed. If you have any questions regarding the foregoing, please contact Gene Palmer of our Real Property Technical Services Section at (916) 445-4982.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

VW:dw
Enclosures:
AL-06-1193A