STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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Executive Director

September 22, 1989

Dear Mr.

This is in response to your letter of July 31, 1989, to Mr. in which you request our opinion as to whether the transactions described in your letter and set forth below have resulted or will result in a property tax reassessment.

Facts

Z Corporation is a Nevada corporation which was incorporated in 1958 by Individual J who transferred real property to Z Corporation in exchange for all its stock. Subsequent to its formation but prior to March 1, 1975, the persons shown on Exhibit A (the "Shareholders") acquired all the stock of Z Corporation. No Shareholder has transferred real property to Z Corporation after March 1, 1975. Z Corporation's assets consist mostly of cash and developed and undeveloped real estate located in California and held for rental and investment purposes. During 1989, Individuals P,Q,R,S,T,U,V and W (the "Purchasers") acquired the stock of Z Corporation in the percentages shown on Exhibit B from Shareholders.

Shareholders disposed of all the common and preferred stock which they owned in Z Corporation in the following integrated and interdependent transactions:

1) Purchasers bought the 500 outstanding common shares of Z Corporation from Shareholders for cash in the percentages shown in Exhibit B.

2) Concurrently with that transaction, Z Corporation distributed a specified amount of cash to H and I in exchange for all the outstanding preferred stock owned by them (see Exhibit A). Z Corporation's Articles of Incorporation were amended to reduce its capital and cancel the preferred stock which was redeemed.

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Following these transactions, no purchaser owned more than 50% of the outstanding stock of Z Corporation. The only stock of Z Corporation outstanding at that time was 500 shares of $100 par value voting stock.

Pursuant to an agreement among themselves and Z Corporation, Purchasers are divided into two groups, Group X and Group Y. Group X and Group Y will each have the power to elect three directors to Z Corporation. The members within Group X and within Group Y are related as indicated in Exhibit B. However, the members of Group X are not related to the members of Group Y. Under the Articles of Incorporation of Z Corporation, each share of stock has equal voting power. As a result, no individual Purchaser nor Group X or Group Y will have direct or indirect control over more than 50% of the voting stock of Z Corporation or the ability to elect more than 50% of the directors of Z Corporation. Additionally, Z Corporation has restated its Articles of Incorporation to provide that the 500 shares of common stock which were previously outstanding would be converted to 1,000 shares of Class A voting common stock and 1,000 shares of Class B voting common stock. This reissued Class A and Class B common stock has the same rights as the converted common stock outstanding at that time. Upon the conversion, each member of Group X received 4 shares of Class A common stock in exchange for each existing share of common stock and each member of Group Y received 4 shares of Class B common stock in exchange for each share of existing common stock. This recapitalization constitutes a nontaxable corporate reorganization under Internal Revenue Code Section 368(a)(1)(E) and California Revenue and Taxation Code* Section 23251. The proportionate ownership and voting power of each shareholder of Z Corporation prior to and after the recapitalization remains exactly the same.

Currently, Z Corporation is incorporated in Nevada. Following these transactions, Z Corporation will effect a change in its place of organization from the State of Nevada to the State of California. This will constitute a corporate reorganization under Internal Revenue Code Section 368(a)(1)(F) and Section 23251. This change in the place of organization will be accomplished by having Purchasers form a new California corporation (NEWCO) and by having Z Corporation merge into NEWCO in a statutory merger. The voting stock ownership in NEWCO by Purchasers will be the same as their percentage ownership in Z Corporation. Alternatively, Z Corporation may

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

form a 100%-owned California subsidiary (SUBCO) and merge into SUBCO in a statutory merger. This transaction will also constitute a corporate reorganization under IRC Section 368(a)(1)(F) and Section 23251, and Purchasers will have the same percentage voting stock ownership in SUBCO as in Z Corporation. After the reincorporation transaction, Z Corporation will also change its name.

You ask whether the above transactions severally or in the aggregate, constitute a transfer of the real property of Z Corporation and cause a reassessment of such property.

Law and Analysis

For property which is purchased or changes ownership after the 1975 lien date, section 110.1 defines "full cash value" of real property as the fair market value of the property determined as of the date on which a purchase or change in ownership occurs. Thus, real property must be reappraised as of the date of such occurrence.

Section 60 generally defines a change in ownership 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 67 defines "purchase" as a change in ownership for consideration.

Section 61 provides that except as otherwise provided in section 62 change in ownership as defined in section 60 includes (at subdivision (i)) the transfer of any interest in real property between a corporation and a shareholder or any other person.

Section 62(a)(2) excludes from change in ownership any transfer between an individual or individuals and a legal entity which results solely in a change in the method of holding title to the real property and in which the proportional ownership interests represented by stock in each and every piece of real property transferred remain the same after the transfer. Section 62(a)(2) does not apply to transfers also excluded under the provisions of section 64(b).

Section 64 provides in relevant part:

> (a) Except as provided in . . . (c) and (d) of this section, the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership interests, shall not be deemed to constitute a transfer of the real property of the legal entity.

(b) Any corporate reorganization, where all of the corporations involved are members of an affiliated group, and which qualifies as a reorganization under Section 368 of the United States Internal Revenue Code and which is accepted as a nontaxable event by similar California statutes, or any transfer of real property among members of an affiliated group, . . . shall not be a change of ownership. The taxpayer shall furnish proof, under penalty of perjury, to the assessor that the transfer meets the requirements of this subdivision.

For purposes of this subdivision "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if:

(1) One hundred percent of the voting stock, exclusive of any share owned by directors, of each of the corporations, except the parent corporation, is owned by one or more of the other corporations; and

(2) The common parent corporation owns, directly, 100 percent of the voting stock, exclusive of any shares owned by directors, of at least one of the other corporations.

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

(d) 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 such legal entity immediately after the transfer shall be considered the "original coowners." 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 coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and 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.

Section 25105 defines ownership or control as direct or indirect ownership or control of more than 50% of the voting stock.

Since neither an individual Purchaser nor Group X nor Group Y has or will have direct or indirect ownership or control of the voting stock of Z Corporation as a result of the disposition of all of the common and preferred stock they owned in Z Corporation, there is no change in ownership under section 64(c). If it were established, however, that Purchasers were acting not as individuals but rather as a partnership or joint venture in the acquisition of the common stock of Z Corporation, there would be a change in ownership under section 64(c) because of the acquisition of control by such partnership or joint venture. Since we do not have sufficient facts regarding the possible existence of such an entity, we express no opinion with respect to that issue.

Since no real property was transferred to Z Corporation on or after March 1, 1975 in a transaction excluded under section 62(a)(2), Shareholders were not "original coowners" as defined in section 64(d). Consequently, the disposition of all the common and preferred shares they owned in Z Corporation in 1989 did not constitute a change in ownership under section 64(d).

The conversion of the 500 shares of stock in Z Corporation into 1000 shares of Class A voting and 1000 shares of Class B voting common stock would not result in a change in ownership of the real property of Z Corporation under section 64(c) or 64(d) for the reasons discussed above.

The statutory merger of Z Corporation into NEWCO or SUBCO would constitute a transfer of the assets of Z Corporation to NEWCO or SUBCO.

If the merger is with SUBCO, the transfer would be excluded under section 64(b) as a transfer between members of an affiliated group. Such transfer would be excluded under section 62(a)(2) since the proportionate ownership interests of the purchasers would remain the same after the transfer, however, since section 64(b) applies, section 62(a)(2), by its express terms does not apply.

If the merger is with NEWCO, the transfer would be excluded under section 62(a)(2) since the proportionate ownership interests of the Purchasers would remain the same after the transfer. Since NEWCO would be formed by Purchasers rather than Z Corporation, the two corporations would not be affiliated corporations as defined by section 64(b). Section 64(b), therefore, would not apply. Since this transaction

would be excluded under section 62(a)(2), Purchasers would be "original coowners" with respect to their NEWCO stock and subsequent transfers of such stock by them.

In either event, a change in the name of the owner not involving a change in the right to beneficial use as would be the case here is not a change in ownership (Rule 462(a)(2)).

Conclusion

Except as otherwise indicated above, we are of the opinion that the foregoing transactions either individually or taken as a whole do not result in a change in ownership of the real property of Z Corporation.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

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

Very truly yours,

Eric F Eisenlauer

Eric F. Eisenlauer
Tax Counsel

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Attachments

cc: