



STATE BOARD OF EQUALIZATION

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March 24, 2000

JAMES E. SPEED.
Executive Director

Major Properties Division
County of Los Angeles
Office of the Assessor
500 West Temple Street
Los Angeles, CA 90012-2770

RE: *Request for Legal Opinion - Parcel No.* to *transfer of SBE Corporation*

Dear Mr. :

This is in reply to your letter of February 1, 2000 addressed to Deputy Director Dick Johnson in which you request a legal opinion as to the proper assessment jurisdiction of property purchased by a locally assessed taxpayer from a state assessed utility. In this case, an electrical generating facility and adjacent land was transferred by a sale from (S) to the Corporation (A) by grant deed. One parcel was subject to an agreement whereby S was granted an option to purchase the parcel within the next 90 years for the nominal price of \$100. Based on the terms of the option agreement, the assessor's office has determined that that S retained the beneficial ownership interest in the parcel and, therefore, that the Board of Equalization should continue to assess the parcel to S as state-assessed property. For the reasons set forth below, it is our opinion that the assessor has assessment jurisdiction over the subject parcel because S transferred all rights in the property when it sold the property to A.

Factual Background

In May 1998 S conveyed by grant deed to A an electrical generating facility and land contiguous to that facility located in the city of . Under the grant deed, S reserved certain pipeline easements in the land. At the time of the sale, the parties entered into an option agreement by which A granted S the option to acquire from A a 21.61 acre parcel which was one of the parcels conveyed by S as part of the sale of the property. The option agreement provides that A grants to S the exclusive right and option to purchase the subject parcel for \$100. The term for exercising the option is the earlier of the date of abandonment of

the property by A or 90 years from the date of execution of the option agreement. The option agreement recites that A granted the option “[a]s a material inducement to S’s agreement to execute the Master Grant Deed and convey the Entire Project to Optionor [A]” and “Optionor [A] acknowledges that S would not have conveyed the Entire Project to Optionor without this option.”

Law and Analysis

Under California law, a grant deed is presumed to convey fee simple interest in real property unless the grant specifies a lesser estate. Civil Code section 1105 provides that “A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended.” When title has passed, Evidence Code section 662 provides that “The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.”

By making the grant deed conveyance of the property, S is presumed to have transferred the full fee interest in the property to A subject to the easement reserved in S. 4 Witkin, *Summary of California Law, Real Property* (9th ed. 1987) § 136, p. 351. In addition to the grant deed presumption, the parties’ option agreement recites that A acquired from S the real property described on Exhibit A to the option agreement, which real property was presumably all property conveyed. In addition, the agreement recites that the option was granted as an inducement to S to convey the entire project, i.e. the real property, to A. Thus, the conveyance of the full fee interest in all real property was intended, and the grant deed transferred the fee simple interest in the property to A, subject to the reserved easement.

Furthermore, as the owner of the legal title to the property, A is presumed to be the owner of the full beneficial title. As provided by Evidence Code section 662, this presumption may be rebutted only by clear and convincing evidence.

The option agreement fails to rebut the presumption because such an agreement does not constitute a beneficial ownership interest in property that is the subject of the option. Rather an option is a contractual right whereby the optionor offers to sell the subject property at a specified price or upon specified terms and agrees, in view of the payment received, that he will hold the offer open for the fixed time. 1 Witkin, *Summary of California Law, Contracts* (9th ed. 1987) §173 p. 187, §175, p. 189; *County of San Diego v. Miller* (1975) 13 Cal.3d 684. Moreover, by granting the purchase option, A has demonstrated that it has beneficial ownership in the subject parcel. That is, A has exercised its right to the beneficial use of the subject parcel by granting to S an option to purchase the parcel under stated terms. See *Pacific Southwest Realty v. County of Los Angeles* (1991) 1 Cal.4th 155, 164. You have provided no other evidence that would rebut the presumption.

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In view of the fact that A, a locally-assessed entity, acquired both the legal title and the beneficial ownership interest in the property conveyed, including the subject parcel, other than the reserved easement, all the property including the parcel subject to the option agreement should be assessed by the assessor as locally-assessed property.

Very truly yours,

/s/ Louis Ambrose

Louis Ambrose
Tax Counsel

LA:tr

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cc: Mr. Dick Johnson, MIC:64
Mr. David Gau, MIC:63
Mr. Harold Hale, MIC:61
Mr. Charles Knudsen, MIC:62
Ms. Jennifer Willis, MIC:70