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Memorandum

To: Mr. Dean Kinnee (MIC:64)
Chief, County-Assessed Properties Division

Date: March 23, 2010

From: Richard S. Moon
Tax Counsel IV

Subject: *Change in Ownership Statement and Preliminary Change in Ownership Reports
Assignment No. 10-032*

This is in response to your February 10, 2010, memorandum to Assistant Chief Counsel Randy Ferris requesting our opinion as to various questions regarding Preliminary Change of Ownership Reports (PCORs) and Change of Ownership Statements (COSs). Your questions are restated below followed by our responses.

Legal Background

As you know, COSs are designed to elicit information necessary for the assessor to determine whether a change in ownership of property occurred, and if so, the appropriate new assessed value. Subdivision (a) of Revenue and Taxation Code¹ section 480 provides in relevant part:

Whenever there occurs any change in ownership of real property or of a manufactured home that is subject to local property taxation and is assessed by the county assessor, *the transferee shall file a signed change in ownership statement in the county where the real property or manufactured home is located*, as provided for in subdivision (c). [Emphasis added.]

Subdivision (c) sets forth the information that is to be provided on the COS. Subdivision (e) sets forth the time within which a COS must be filed. If the document evidencing a change in ownership is recorded in the county recorder's office, then the statement shall be filed with the recorder at that time.² However, if a COS is not filed at that time, it shall be filed within 45 days from the date the change in ownership occurs.³ There is no penalty for failure to file the form at the time of recording. A penalty of 10 percent of current years taxes or \$100 is added only when a COS is not returned within 45 days of a request by the assessor.⁴ A PCOR is authorized by section 480.3. Subdivision (a) provides that:

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

² Rev. & Tax. Code, § 480, subd. (c).

³ However, Rev. & Tax. Code, § 480, subd. (b) provides that for transfers that occur by reason of death, a COS shall be filed at the time the inventory and appraisal is filed with the court if the real property is subject to probate proceedings, or else within 150 days after the date of death.

⁴ Rev. & Tax. Code, § 482, subd. (a).

Each county assessor and recorder shall make available, without charge and upon request, a form entitled ‘Preliminary Change of Ownership Report,’ which transferees of real property shall complete and *may file with the recorder concurrent with the recordation of any document effecting a change in ownership.* [Emphasis added.]

Prior to the enactment of Senate Bill 824 (SB 824),⁵ section 480.4 contained a sample PCOR specifying the contents of the form. However, SB 824 deleted the specified contents and instead requires the State Board of Equalization (BOE), after consultation with the California Assessors’ Association (CAA) and interested parties, to prescribe the contents of the form. SB 824 also amended section 480.3 to add a requirement that the person signing the PCOR certify that the information provided on the PCOR is true, correct, and complete, to the best of that person’s knowledge.

As described above, the plain language of section 480 makes clear that a COS is a mandatory filing to be made at the time of recording a document that evidences a change in ownership. However, no penalty attaches for failure to file the form, and the recorder may not refuse to record a document for failure to file the form.⁶ A penalty applies only if the transferee does not file the COS within 45 days of a request from the assessor. By contrast, the plain language of section 480.3 makes clear that the PCOR is an optional filing that a transferee can elect to make at the time of recording the document evidencing a change in ownership. If a PCOR is not filed at that time, the recorder may charge an additional recording fee of 20 dollars.⁷ However, the recorder may not refuse to record a document even if a PCOR is not filed so long as the 20 dollar fee is paid.⁸

Questions and Answers

1. If an assessee completes all the information on a PCOR, and the county then mails out a COS, can a penalty be applied if the COS is not returned or is returned with incomplete information?

Answer: Yes. As outlined above, PCORs and COSs are two separate statements governed by two separate statutory provisions. Compliance with one does not waive the requirement to comply with the other. Furthermore, section 480.3, subdivision (d), governing PCORs, provides that, “The authority to obtain information pursuant to this section is in addition to, and not in lieu of, any existing authority the assessor has under this article.”

2. Does the language in SB 824 allow interested parties to develop multiple PCORs?

Answer: There is no explicit requirement in the language of either section 480.3 or 480.4, as amended by SB 824, that requires there only be one PCOR applicable to all types of transferees, or that allows the development of different PCORs for different transferees. SB 824 simply

⁵ 2009-2010 Reg. Sess. §§ 7 & 8.

⁶ Rev. & Tax. Code, § 480, subd. (e).

⁷ Rev. & Tax. Code, § 480.3, subd. (b).

⁸ Rev. & Tax. Code, § 480.3, subd. (c).

requires that the BOE, after consultation with the CAA and interested parties prescribe the PCOR. However, we believe that there should be only one PCOR since section 480.4, subdivision (b) states that the BOE shall prescribe *the* PCOR, suggesting that there should only be one form. We believe that multiple forms may be more likely to cause confusion, and frustrate the statutory purpose of section 480.4 to maintain “statewide uniformity in the contents of the report.” This would, however, in no way preclude the development of a PCOR with multiple sections or schedules requesting different information from different types of transferees.

3. If multiple COSs are sent, would the assessee have the choice of completing one of the COSs and return it to fulfill his/her obligation, or, if the assessee only completed one (but not the other), would the assessor be able to apply a penalty for non-response and/or incomplete response?

Answer: Because section 480 requires that the transferee shall file a signed change in ownership statement in the county where the real property is located, in our opinion, if a transferee receives multiple COSs but completes one in its entirety and signs it, he has met the requirements of section 480, and no penalty can be applied for additional COSs sent by the assessor and not completed by the transferee. However, this does not in any way preclude the assessor from using any other means at his disposal to obtain information from the transferee needed to properly value the property transferred.

4. If a PCOR is completed for a commercial property (for example) and a subsequent form is then sent requesting more detailed income information and the supplemental form is not returned, could this be considered as an incomplete PCOR and a COS procedure started that might result in a penalty under section 482.

Answer: Section 480.3 allows a transferee to file a PCOR at the time of recording a document that evidences a change in ownership and avoid an additional \$20 recording fee. The additional \$20 recording fee is the only penalty allowed by statute in the event a PCOR is not filed at the time of recording. If an assessor determines that a filed PCOR is incomplete, he may send a “supplemental” PCOR requesting the transferee provide all the necessary information. Alternatively, an assessor may send a COS to the transferee. If the COS statement is not filed or is filed incomplete, the assessor may apply a penalty as provided for in section 482. As explained in the answer to question 1, the PCOR and COS are governed by separate statutory provisions, and the filing of one does not relieve the transferee of the obligation to file the other.

5. Can an assessor mail a taxpayer a PCOR when it has not been completed at the time of recording or must the assessor send the taxpayer a COS.

Answer: Section 480.3 allows the filing of a PCOR at the time of recording a document that evidences a change in ownership. That provision does not provide for the filing of a PCOR at any other time. Thus, while there is no statutory prohibition against an assessor requesting a PCOR at some time other than recording, we believe it is not good practice to do so. Furthermore, no penalty would apply if the transferee did not file a PCOR subsequently sent by an assessor. As explained above, the only penalty for non-filing of a PCOR at the time of recording is an additional \$20 recording fee. The recorder may not refuse to record the document even if a PCOR is not filed as long as the additional fee is paid.

For these reasons, it is our opinion that if a PCOR is not filed at the time of recording, an assessor should send a COS to obtain change in ownership information. If the COS is not filed by the transferee within 45 days of the assessor's request, the section 482 penalty will then apply.

RM:yg

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cc: Mr. David Gau MIC:63
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