



## STATE BOARD OF EQUALIZATION

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February 22, 2011

**Re: *Requirement of State Assesseees to File Statement of Change in Control or Ownership of Legal Entities***  
***Assignment No.: 10-144***

Dear Mr. \_\_\_\_\_ :

This is in response to your request for a legal opinion on whether a state assessee that owns or leases only property that is state assessed is required to file form BOE-100-B, *Statement of Change in Control and Ownership of Legal Entities* (BOE-100-B) with the State Board of Equalization (BOE) when an unrelated entity obtains a controlling interest in the assessee. As discussed more fully below, it is our opinion that a filing is not required under the circumstances you set forth.

### **Facts**

An assessee (State Assessee) is a corporation that owns real property in California that is state assessed for property tax purposes. Neither the State Assessee nor any entities owned or controlled directly or indirectly by the State Assessee owns or leases any real property that is locally assessed for California property tax purposes. An unrelated corporation acquired more than 50 percent of the voting stock of State Assessee.<sup>1</sup>

### **Law and Analysis**

Article XIII A, section 2 (Proposition 13) of the California Constitution requires the assessment of real property at the county assessor's valuation on the 1975-76 tax bill under "full cash value" (the valuation rollback), or the appraised value of real property thereafter when purchased, newly constructed, or a "change in ownership" has occurred after the 1975 assessment. Proposition 13 is implemented as set forth in Division 1, Part 0.5, Revenue and Taxation Code sections 50-100.95, titled *Implementation of Article XIII A of the California Constitution*.

<sup>1</sup> We are assuming, of course, that State Assessee remains state assessed after its acquisition.

For purposes of Proposition 13, a change in ownership is defined in Revenue and Taxation Code<sup>2</sup> 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." Statutory examples of what do, and what do not, constitute a change in ownership under this test are set forth in sections 61 et seq. As a general rule, the transfer of ownership interests in a legal entity, such as corporate voting stock or partnership or limited liability company interests, does not constitute a transfer of the real property owned by the legal entity. (Rev. & Tax. Code, § 64, subd. (a).) One of the exceptions to this general rule is contained in section 64, subdivision (c)(1), which provides that:

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, including any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, 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.

Section 480.1, subdivision (a) provides that whenever there is a change in control of a corporation or other legal entity as defined in section 64, subdivision (c)(1), the person or legal entity acquiring control of the corporation or other legal entity must file a BOE-100-B with the BOE within 45 days from the date of the change in control. These provisions, however, are only applicable to locally assessed properties.

As you know, certain property in the State of California is assessed annually at fair market value pursuant to the provisions of Article XIII, section 19 of the California Constitution which provides that the BOE shall annually assess: (1) pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties, and (2) property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the state, and companies transmitting or selling gas or electricity. The owners of these types of property are referred to as "state assesseses" and these types of property are referred to as "state assessed property." Real property that is not state assessed property is referred to as locally assessed property because it is assessed by the county assessor. The assessment of state assessed property is governed by Division 1, Part 2, Chapter 4 of the Revenue and Taxation Code sections 721-868, titled *Assessment by the State Board of Equalization Generally*.

The California Supreme Court ruled in *ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859 that the valuation rollback provision of Article XIII A, section 2 does not apply to state assessed property. Notably, the court also held that Article XIII A applies only to locally assessed real property, and therefore does not apply to state assessed property (i.e., there is no "county assessor's valuation" of state assessed property). (*Id.*) Therefore, the change in ownership provisions of Proposition 13, also found in

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<sup>2</sup> All "section" statutory references are to the Revenue and Taxation Code.

Article XIII A, section 2, and implemented by Division 1, Part 0.5 of the Revenue and Taxation Code are not applicable to state assessed property.

Since the change in ownership provisions of Proposition 13 are not applicable to state assessed property, it necessarily follows that none of the statutory scheme defining what constitutes a change in ownership or new construction would apply to state assessed property. Therefore, if another person or legal entity obtains a controlling ownership interest in a state assessee that owns only state assessed property, and any entities under its ownership control<sup>3</sup> also only own state assessed property, there would not be a change in ownership of any of the assessee's real property. (See Property Tax Annotation 755.0005 (October 31, 1996).) For this same reason, the reporting requirement of section 480.1 does not apply to the acquisition of a state assessee when it has no locally assessed property, and no entity under its direct or indirect ownership control owns locally assessed property. This is also consistent with the "Important Notice" required by section 480.1 to be printed on the BOE-100-B, which states in relevant part:

The law requires any person or legal entity acquiring ownership control in any corporation, partnership, limited liability company, or other legal entity owning real property in California *subject to local property taxation* to complete and file a change in ownership statement with the State Board of Equalization at its office in Sacramento. (Emphasis added.)

Section 482, subdivision (b) provides for a penalty for entities that do not file a BOE-100-B when required. The penalty is applicable notwithstanding the fact that the BOE determines that no change in control has occurred under section 64, subdivision (c)(1). Since there would be no filing requirement under these circumstances under section 480.1, section 482, subdivision (b) is not applicable. Thus, there could be no penalty under that provision for failure to file, either on the assessee's own volition or in response to a request from the BOE. Section 482, subdivision (b) only applies if "a person or legal entity [is] required to file a statement described in Section 480.1 ... [and] fails to do so," and clearly under these circumstances there is no requirement to file the change in ownership statement.

Accordingly, the acquiring corporation under your facts has no obligation to file a BOE-100-B with the BOE upon its acquisition of more than 50 percent of the voting stock in State Assessee, and no penalty for failure to file may attach. We do note, however, that where a state assessee either owns locally assessed property or has direct or indirect ownership control of any legal entity that owns locally assessed property, the person or legal entity obtaining ownership control of the state assessee would be required to file form BOE-100-B. Additionally, if a state assessee were to receive a request from the BOE to file form BOE-100-B where there is no obligation to file it, we advise it simply return the form indicating in a cover letter and at the top of the form that it is a state assessee and that it and all entities under its direct and indirect ownership control did not own locally assessed real property as of the date of acquisition of ownership control.

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<sup>3</sup> For California property tax purposes, ownership control is defined as directly or indirectly owning more than 50 percent of the ownership interests of a partnership or limited liability company, or directly or indirectly owning or controlling more than 50 percent of the voting stock of a corporation. (See Rev. & Tax. Code, § 64, subdivision (c)(1) and Property Tax Rule 462.180.)

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/ Matthew F. Burke

Matthew F. Burke  
Tax Counsel III (Specialist)

MFB/mcb

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cc: Mr. David Gau MIC:63  
Mr. Dean Kinnee MIC:64  
Mr. Todd Gilman MIC:70