



STATE OF CALIFORNIA

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May 10, 1991

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Dear :

This is in response to your letter of April 12, 1991 to the attention of Mr. in which you request our opinion with respect to the following facts set forth in your letter.

1. On August 7, 1990, Home Saving of America ("Home Saving") deeded the subject real property to Home Facilities Corporation ("Home Facilities"), its wholly-owned subsidiary.
2. Next, Home Facilities leased the subject property back to Home Saving for a term of twenty years plus seven five-year options.
3. On September 20, 1990, Home Facilities sold the subject property to Metropolitan Life Insurance Co. ("Metropolitan") and requested that the sale be excluded from reappraisal as the subject property was subject to a lease of over thirty-five years.

Your question is: since the lease was not considered a change in ownership, shouldn't the sale be a change in ownership?

"Change in ownership" is defined by Revenue and Taxation Code\* 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.

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

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Section 62 provides in relevant part, however, that change in ownership shall not include:

any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more.

Further, section 64 provides in relevant part that:

any transfer of real property among members of an affiliated group...shall not be a change in ownership.

Since a parent corporation and its wholly-owned subsidiary are members of an affiliated group for purposes of section 64(b), the transfer of real property from Home Saving to Home Facilities and the lease of such property from Home Facilities back to Home Saving are both excluded from change in ownership under section 64(b).

Also, since the sale by Home Facilities was a transfer of a lessor's interest in taxable real property subject to a lease with a remaining term including renewal options of more than 35 years, such transfer would be excluded from change in ownership under section 62(g).

Although there would be no change in ownership as a result of any of the steps in the foregoing transaction, Home Saving and Metropolitan would appear to be in the identical position as they would had Home Saving sold the property to Metropolitan directly and leased the property back from Metropolitan. Such a transaction, i.e., a sale coupled with a leaseback for a term of more than 35 years including renewal options was held to constitute two changes in ownership in Industrial Indemnity Co. v. City and County of San Francisco (1990) 218 Cal. App. 3d 999. Thus, to conclude that the transaction in this case results in no change in ownership means that the parties can do indirectly what the Court of Appeal has said they cannot do directly, i.e., avoid reassessment. In our opinion, this raises the issue of the applicability of the step-transaction doctrine.

The advice we have been providing to assessors and others regarding the step-transaction doctrine is as follows:

As to application of the step-transaction doctrine, where a taxpayer utilizes a series of transfers or steps to effect a transfer which might otherwise have been

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accomplished by fewer transfers or steps, we recommend that any steps in the transaction be disregarded if the county assessor concludes that they are not supported by a business purpose other than avoiding higher property taxes.

Here, there is no apparent business purpose other than avoiding higher property taxes for the transfer from the parent to the subsidiary and the leaseback to the parent. If, after reviewing the matter, including any business purposes alleged by the parties for the seemingly extraneous steps, you conclude that no business purpose other than avoiding higher property taxes exists for such steps, application of the step-transaction doctrine would be appropriate. In that event, it would be proper to conclude that the substance of the transaction was the same as in Industrial Indemnity, i.e., a sale by Home Saving to Metropolitan coupled with a leaseback for a term of more than 35 years including renewal options and that as a result, a change in ownership occurred.

Very truly yours,

Tax Counsel

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cc: Mr.

Mr.