

Memorandum



220.0087

To :

Date : March 19, 1984

From :

Subject: Transfer of Customer Premises Equipment (CPE)
from P: to A'

In my recent memo to you, I advised you that, in my opinion, the property of A' should be assessed at the local level. On January 1, 1984, the operating companies, including P, transferred their CPE to A. Left unanswered by my memo was the issue of whether the transfer of CPE by P to A on January 1, 1984, constituted a change in ownership for property tax purposes. This issue only arises, as you know, to the extent that CPE can be characterized as real property. It is my understanding that CPE consists generally of telephone sets and private branch exchanges. While much of this property may properly be classified as personal property, I believe it is reasonable to assume that some of this property, particularly large private branch exchanges may properly be classified as fixtures and thus real property. In any event, for purposes of this memo, I am making that assumption.

As a general rule, a transfer of real property from one corporation to another is a change in ownership. Revenue and Taxation Code Section 61(i); Property Tax Rule 462(j)(1). Revenue and Taxation Code Sections 62(a)(2) and 64(b), however, provide for two exceptions.

Considering Section 64(b) first, Property Tax Rule 462(j)(2)(A) succinctly states the rule of Section 64(b) which excludes the following from the change in ownership provisions:

"(A) Transfers of real property between or among affiliated corporations, including those made to achieve a corporate reorganization if:

"(i) the voting stock of the corporation making the transfer and the voting stock of the transferee corporation are each owned 100 percent by a corporation related by voting stock ownership to a common parent, and

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"(ii) the common parent corporation owns directly 100 percent of the voting stock of at least one corporation in the chain(s) of related corporations....

"If real property is transferred between nonaffiliated corporations, only the property transferred...shall be deemed to have undergone a change in ownership.

Prior to the divestiture of A on January 1, 1984, the transferor corporation (P, formerly known as P Corporation) and the transferee corporation (A') were affiliated corporations under Section 64(b) and Property Tax Rule 462(j)(2)(A) because each was wholly owned by A. On January 1, 1984, however, A divested itself of its operating company subsidiaries including P. To accomplish the divestiture, A transferred its 100 percent common equity ownership in P to Telesis, one of seven regional holding companies formed by A. On the same date, A transferred its ownership in the seven regional holding companies to the shareholders of A' stock. Thus, commencing January 1, 1984, each regional holding company (and their subsidiaries) became independent of A' and of each other. Accordingly, since the transfer from P to A' on January 1, 1984 was between corporations which were no longer affiliated on the date of the transfer, the transfer is not excluded under Section 64(b) or Property Tax Rule 462(j)(2)(A).

This conclusion is consistent with the intent of the Legislature in enacting Section 64(b) as indicated by former consultant to the Assembly Revenue and Taxation Committee. In explaining the legislative history and intent of Section 64(b) and related provisions, noted that:

"The purpose of [Section 64(b)] is to exclude those transfers made among subsidiaries directly or indirectly owned by the same parent corporation, and which, therefore, are essentially under the same ownership and control before the transfer as after."

(Implementation of Proposition 13, Vol. I, Property Tax Assessment, Assembly Revenue and Taxation Committee, Assembly Publication No. 748, October 29, 1979.)

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It is clear from [redacted] statement that in order to qualify under Section 64(b), the transferor and transferee corporations must be affiliated after the transfer occurs. As indicated above, that was not the case here.

The second exception to the general rule which must be considered is Section 62(a)(2), which excludes from change in ownership:

"Any transfer between...legal entities,... which results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock,...or otherwise, in each and every piece of real property transferred, remain the same after the transfer."

As part of the divestiture transaction, each A' shareholder of record as of December 30, 1983 received one share in each of the seven regional holding companies for every ten common shares of A' held. Owners of 500 or more shares received certificates for whole shares and a check for any fractional shares. Owners of fewer than ten shares received a check for fractional shares. The remaining shareholders were given various options including receiving certificates for whole shares and checks for fractional shares. Each A' shareholder retained the same number of A' shares and the original certificates representing those shares.

Although the proportional ownership interests of the transferees as represented by A' common stock remained the same, that is not the case with respect to the proportional ownership interests of the transferors. Since many shareholders owning of record a number of A' shares not divisible by ten received a check for fractional shares in Telesis (as well as the other six regional holding companies), the proportional ownership interests of the transferors as represented by the stock of Telesis (and the other six regional holding companies) did not remain the same. The transfer from P' to A' therefore, is not excludable under Section 62(a)(2).

Accordingly, since the transfer from P' to A' does not fall within either of the exceptions to the general rule as indicated above, it constitutes a change in ownership as of January 1, 1984.

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cc: Mr. Gordon P. Adelman

Mr. Robert H. Gustafson