

(916) 445-4588

December 12, 1983

Dear \_\_\_\_\_

You have asked for our opinion as to the property tax consequences of the following transaction:

X Corporation is owned by A, B, and C. The shareholders own 43-1/2, 6-1/2, and 50 percent of the outstanding stock, respectively. X Corporation redeemed the stock of C; thus, after the redemption, A owned 87-1/2 percent and B owned 13 percent of the outstanding stock.

It is our view that under Section 64(c) of the Revenue and Taxation Code, a change in ownership of the real property owned by X Corporation has occurred. Section 64(c) provides that whenever any person obtains control through the purchase or other transfer of corporate stock, such transfer shall be a change in ownership of the property owned by the corporation. Control is defined as owning more than 50 percent of the voting stock. Since A previously owned only 43-1/2 percent of the stock and after the transaction owns 87 percent of the outstanding stock, he has obtained control and a change in ownership under Section 64(c) has occurred.

Very truly yours,

Lawrence A. Augusta  
Assistant Chief Counsel

LAA:jlh

Legal Section



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Executive Director

April 1, 1999

Dear Mr. :

This is in response to your letter dated February 19, 1999, addressed to Assistant Chief Counsel Larry Augusta, in which you request our opinion that the redemption of certain shares of stock of an unnamed corporation, described in your letter, would not effect a change in ownership of the corporation's real property. For the reasons set forth below, which is essentially the same analysis as you submit in your letter, we concur that this transaction would not result in a change in ownership.

In 1989, the corporation had 151,060 shares of stock outstanding. Husband and Husband's sister each owned 50% of these outstanding shares, or 75,530 shares each. In 1991, Husband transmuted 59,530 of his shares into the community property of his wife and himself. He retained the remaining 16,000 shares as his separate property.

In 1992, the corporation redeemed 26,030 of the sister's shares, leaving 125,030 total shares outstanding, and owned as follows:

Husband's Separate Property: 16,000 Shares (12.8%)

Husband and Wife's Community Property: 59,530 Shares (47.6%)

Sister: 49,500 Shares (39.6%)

We assume that the corporation owns real property in California. You ask whether, in our opinion, the redemption resulted in a change in control of the corporation, which would result in a change in ownership and reassessment of the corporation's real property for property tax purposes, pursuant to Revenue and Taxation Code section 64, subdivision (c).

April 1, 1999

Section 64 provides in relevant part:

(a) Except as provided in subdivision (i) of Section 61 and subdivisions (c) and (d) of this section, the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership or limited liability company interests, shall not be deemed to constitute a transfer of the real property of the legal entity. This subdivision is applicable to the purchase or transfer of ownership interests in a partnership without regard to whether it is a continuing or a dissolved partnership.

\* \* \*

(c)(1) 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.

\* \* \*

We have previously stated our opinion that if any person or entity obtains direct or indirect control of a corporation as a result of a stock redemption, the requirements of subdivision (c) of section 64 are met, and a change in ownership of the real property of the corporation results. Control is defined in that subdivision as owning more than 50 percent of the voting stock of the corporation.

As the facts outlined above indicate, neither Husband nor the community obtained direct control of the corporation. Under those facts, Husband could be found to have obtained indirect control of the corporation only if he is deemed to be the owner of substantially all of the shares owned by his wife and him as community property. However, as you point out, that has not been our interpretation of section 64, subdivision (c). We have previously expressed the view that where a husband and wife acquire an ownership interest in a legal entity as "community property," the acquisition, for property tax purposes, should be treated in the same manner as an acquisition where husband and wife take title as "joint tenants." See Letter To Assessors No. 85/33. We have further expressed the view that a husband and wife holding ownership interests in legal entities as joint tenants are to be considered separate individuals, each owning 50 percent of the

April 1, 1999

ownership interests in question. See Letter To County Assessors Only No. 83/17. It has been 16 years since the latter has been issued, and there has been no reported appellate court decision on this issue. Nor are we aware of any pending litigation involving this issue, or of any county assessor who is not following the letters.

Applying this interpretation to the facts outlined above, Husband would be considered the owner of one-half of the shares owned by him and his wife as community property, or 29,765 shares, plus the 16,000 shares he owns as his separate property, for a total of 45,765 shares. Those shares represent only 36.6 percent of the total outstanding shares following the redemption. As such, Husband would not obtain control of the corporation, and no change in ownership would result by reason of the stock redemption described herein.

The views expressed in this letter are advisory only; 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,



Daniel G. Nauman  
Tax Counsel

DGN:jd

<http://property/precedents/corporate/1999/04gou.doc>

cc: Mr. Dick Johnson, MIC:63  
Mr. David Gau, MIC:64  
Ms. Jennifer Willis, MIC:70

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