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December 23, 2011

Re: *Filing of Form BOE-100-B, Statement of Change in Control and Ownership of Legal Entities*
Assignment No.: 11-083

Dear Ms. Frambach:

This is in response to your email wherein you requested our opinion regarding the filing of *Form BOE-100-B, Statement of Change in Control and Ownership of Legal Entities* (Form 100-B) in circumstances where transfers of legal entity interests would result in a change in control under Revenue and Taxation Code¹ section 64, subdivision (c)(1), or a change in ownership under section 64, subdivision (d), but qualify for an exclusion. As explained below, it is our opinion that Form 100-B must be filed where there was a technical change in control or change in ownership, but the spousal, registered domestic partner, or proportional ownership interest transfer exclusion applies. Where the transfers are made to qualifying trusts, a Form 100-B is not required to be filed.

Facts

You ask whether Form 100-B is required to be filed when: (i) there has been a transfer of legal entity ownership interests that result in more than 50 percent ownership in one person that is a technical change in control under section 64, subdivision (c)(1), but is excluded from change in ownership because the transfer is proportional, qualifies for the interspousal or registered domestic partner exclusion, or is to a qualifying trust; or (ii) there have been cumulative transfers of more than 50 percent of the original co-owner interests but there is not a change in ownership under section 64, subdivision (d) because the transfers are proportional, qualify for the interspousal or registered domestic partner exclusion, or are to a qualifying trust.

You also ask whether one person may accumulate more than 50 percent ownership of non-voting stock in a corporation without triggering reassessment of the corporate real property under section 64, subdivision (c)(1) so long as there is not an accumulation of more than 50 percent of the voting stock.

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

Law & Analysis

Article XIII A, section 2 of the California Constitution requires the reassessment of real property upon a "change in ownership," unless an exclusion from change in ownership applies. Section 64, subdivision (a) provides that a transfer of ownership interests in a legal entity does not constitute a transfer of the real property held by the entity, and thus does not constitute a change in ownership of the real property of the entity. However, section 64, subdivision (c)(1) 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 . . . 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. (Emphasis added.)

Furthermore, section 64, subdivision (d) provides:

If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in that legal entity immediately after the transfer shall be considered the "original co[-]owners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original co[-]owners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

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 Form 100-B with the Board of Equalization within 45 days from the date of the change in control.² Section 480.2, subdivision (a) requires a Form 100-B to be filed whenever there is a change in ownership of any corporation, partnership, limited liability company, or other legal entity, as defined in section 64, subdivision (d).

Effective January 1, 2010, Senate Bill (SB) 816 amended, in part, sections 480.1, 480.2, 482, and 483, relating to the requirement for legal entities to file Form 100-B. The amendments made by SB 816 establish a penalty for those legal entities that do not file the Form 100-B with the Board within 45 days of a change in control or change in ownership pursuant to section 64,

² This period was changed from 45 to 90 days by Senate Bill 507 (Stats. 2011, ch. 708, § 2), effective January 1, 2012.

subdivision (c)(1) or (d), and in the case of an incomplete filing, if the missing information is not provided upon a second request.³ Under sections 480.1, 480.2 and 482, the penalty attaches regardless of whether the Board determines that no change in control or change in ownership occurred. Prior to the 2010 amendments, an entity undergoing a reportable change in control or change in ownership was subject to the penalty only if it did not file a Form 100-B within 45 days of a request from the Board to file.

The amount of the penalty is 10 percent of the taxes applicable to the new base year value of the real property owned by the legal entity if there was a change in ownership under section 64, subdivision (d), or 10 percent of the taxes applicable to the new base year value of the real property owned by the entity in which control was obtained if there was a change in control under section 64, subdivision (c)(1). If the change in control or change in ownership is otherwise excluded from reassessment, then the penalty is calculated based on the current year's taxes.

Interspousal or Registered Domestic Partner Transfers

Section 63 and Property Tax Rule⁴ (Rule) 462.220 exclude transfers between spouses from change in ownership. Section 62, subdivision (p) excludes transfers between registered domestic partners from change in ownership. Both of these exclusions include transfers of legal entity interests. When a transfer between spouses result in one spouse obtaining more than 50 percent of the interests in a legal entity, a change in ownership would result pursuant to section 64, subdivision (c)(1), but for the interspousal exclusion. (Rule 462.220, subd. (b).) We have interpreted this portion of the Rule to apply equally to registered domestic partners. (Assessors' Handbook Section 401 (AH 401), *Change in Ownership* (September 2010), p. 50.)

Since there has been a change in control of the entity, albeit one that is excluded from any change in ownership reassessment, a Form 100-B must be filed pursuant to section 480.1 since that section does not make any exceptions for excluded transfers and since Form 100-B contains a section which allows taxpayers to check a box indicating an exclusion applies. In fact, the penalty of section 482 for failure to file Form 100-B applies *whether or not a change in ownership actually occurs*. Therefore, in a situation where section 64, subdivision (c)(1) applies since one spouse or registered domestic partner has obtained more than 50 percent of a corporation's voting stock, or a partnership or limited liability company's capital and profits interests, but the transfer is excluded from change in ownership by section 63 or section 62, subdivision (p), a Form 100-B must be filed indicating that the exclusion applies.

The interspousal exclusion also excludes transfers of original co-owners interests from being counted and cumulated for the purposes of determining a change in ownership under section 64, subdivision (d). (Rule 462.180, subd. (d)(2).) We have interpreted this portion of the Rule to apply equally to registered domestic partners. (AH Section 401, p. 50.) For the same reasons as for changes in control, it is our opinion that where cumulatively more than 50 percent of original co-owner interests in an entity have been transferred and some or all of the transfers were between spouses or registered domestic partners, a Form 100-B must be filed indicating that the interspousal or registered domestic partner exclusion applies to exclude the transfers from resulting in a change in ownership.

³ Rev. & Tax. Code § 482, subd. (b).

⁴ Cal. Code Regs., tit. 18, § 462.180, subd. (d)(1)(A). All Rule references are sections to title 18 of the California Code of Regulations.

Proportional Transfers

Under Rule 462.180, subdivision (d)(4), transfers of legal entity interests that result solely in a change in the method of holding title, and in which proportional ownership interests in all real property represented by the transferred interests remain the same after the transfer do not result in a change in control of the entity even if technically a single person or entity has obtained control within the meaning of section 64, subdivision (c)(1). Likewise, under Rule 462.180, subdivision (d)(2), transfers of original co-owner interests that result solely in a change in the method of holding title and in which the proportional ownership interests in all real property represented by the transferred interests remain the same after the transfer will not be counted and cumulated to determine a change in ownership under section 64, subdivision (d). However, for the same reasons that apply to interspousal and registered domestic partner transfers, where either subdivision (c)(1) or (d) of section 64 is triggered by transfers that may be excluded by the above provisions, a Form 100-B must be filed indicating which exclusion(s) apply.

Transfers to Qualifying Trusts

The transfer of a legal entity interest by a trustor to either a revocable trust or an irrevocable trust in which the trustor-transferor is the sole present beneficiary will not result in a change in ownership of any property owned by the entity. (Rule 462.160, subds. (b)(1)(C), (b)(2).) Transfers to these qualifying trusts do not meet the definition of a change in ownership because the beneficial ownership of the entity interest is not transferred. (See Rev. & Tax. Code, § 60.) Since no new person or entity obtains control as a result of transfer to a qualifying trust, section 64, subdivision (c)(1) does not apply. Further, since the beneficial ownership of an entity interest is not transferred to another person or entity, transfers of original co-owner interests to qualifying trusts are not counted and cumulated for the purposes of section 64, subdivision (d). (Rule 462.180, subd. (d)(2).) Since transfers to qualifying trusts cannot, by definition, trigger either subdivision (c)(1) or (d) of section 64, Form 100-B is not required to be filed in these cases. This is to be distinguished from interspousal, registered domestic partner, and proportional transfers, which can trigger subdivisions (c)(1) and (d) of section 64, but are excluded from reassessment.

Transfers of Nonvoting Stock.

For property tax purposes, control of a corporation is determined by ownership or control of voting stock. (Rule 462.180, subd. (d)(1)(A).) When a person or entity obtains through a reorganization or any transfer, direct or indirect ownership or control of more than 50 percent of the voting stock in any corporation, there is a change in ownership of all real property owned by the corporation. (Rev. & Tax. Code, § 64, subd. (c)(1).) The acquisition of more than 50 percent of the nonvoting stock in a corporation, on the other hand, does not trigger section 64, subdivision (c)(1) or have any other change in ownership consequences, and a Form 100-B is not required to be filed when this occurs.

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/ Daniel Paul

Daniel Paul
Tax Counsel

DMP:yg

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cc: Honorable

County Assessor

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Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70
Ms. Lisa Thompson MIC:64