



Memorandum

To: _____ Date November 20, 1995
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From:

Subject: Change in Control - Date of Death is Date of Transfer

This is in response to your request of October 3, 1995, pertaining to the application of Section 64, subdivision (c) with regard to the determination of the date of the change in control of Corporation. The following facts are submitted for purposes of our analysis:

1. A California corporation, known as, _____ Corporation (hereinafter "Corporation"), owns real property in _____ County. Corporation was originally owned 100% by I _____, who died on June 28, 1975. Pursuant to the Seventh Article (page 5) in his Last Will and Testament, 100% of his shares of stock in Corporation were devised and bequeathed to the following designated relatives:

N	25%
R	25%
F	12.5%
L	12.5%
M	25%

2. Several years later, on July 17, 1979, R _____ died. His 25% interest in Corporation was devised and bequeathed to N _____. Finally, on April 4, 1993, F _____ died. Half of her 12.5% interest in Corporation (6.25%) was bequeathed to N _____, and half (6.25%) was bequeathed to M _____.

3. The Estate of I _____ finally closed on December 20, 1994.

4. The Estate of R _____ closed on March 17, 1995.

There is no question that a change in control of Corporation occurred when N _____, through the several bequests/devisees, acquired more than 50% of the ownership interests. The sole issue for purposes of this analysis is **when** such change in control occurred. Legal Counsel for _____ contends that since the Estate of R _____ did not close until March _____, 1995, N _____ acquired control of Corporation (more than 50% of its

shares) upon such distribution, as R 's Estate was subject to probate court administration until that date. In contrast, you believe that N acquired control of Corporation at the time of F 's death on April 4, 1993, because date of death, not the date of distribution, is the date of transfer of ownership interests in corporations for change in ownership purposes; and on April 4, 1993, N controlled more than 50% of Corporation's shares. For the reasons hereinafter explained, we agree with your view that there was a change in ownership of Corporation on April 4, 1993.

LAW AND ANALYSIS

As you are aware, Section 64, subdivision (a) provides that the purchase or transfer of ownership interests in legal entities, such as shares of stock in a corporation, does not constitute a transfer of the real property of the corporation. Exceptions to this are found in subdivisions (c) and (d) of Section 64 in Section 61, subdivision (h). The exception in subdivision (c) provides that a change in ownership of property owned by a corporation occurs when a corporation, partnership, limited liability company, or person obtains control of the corporation. "Control" is defined as "direct or indirect ownership or control of more than 50% of the voting stock..." (Property Tax Rule 462.180, subdivision (d) (1) (A).)

Specifically addressing the question of the **date of change in ownership** of real property, Property Tax Rule 462.260 states that "the following dates shall be used:"

(c) INHERITANCE (by will or intestate succession). The date of death of the decedent.

In adopting this provision of the rule, the Board relied on California statutes and case law. In particular, California Probate Code Section 7000 expressly states:

"Subject to Section 7001, title to a decedent's property passes on the decedent's death to the person to whom it is devised in the decedent's will or, in the absence of such a devise, to the decedent's heirs as prescribed in the laws governing intestate succession."

Accordingly, a devisee may, even before distribution under probate proceedings, alienate, assign, or transfer his interest in property subject to such proceedings so long as the sale is not fraudulent as against other beneficiaries or creditors. Legal title to the property may be transferred, however, only by the executor or personal

representative; and any purchaser/transferee acquires title and possession subject to the probate administration and to the rights of beneficiaries, creditors and other persons if the judgment/order for distribution (which finally determines such rights) has not been issued (Probate Code Section 7001).

For these reasons, whether property is finally distributed under will at the close of probate administration or as the result of the settlement of a contested probate matter, there is a change in ownership of the property on the date of death of the decedent. (See Rigby Letter, attached, April 13, 1981, where property is transferred on date of death even if probate is contested and settlement occurs.) Moreover, this rule is applicable to shares of corporate stock, as well as real property, transferring on the date of death of the decedent. For purposes of determining change in control, an heir, devisee, or legatee to an estate who receives a percentage of the voting stock of a corporation has the right to vote such shares of stock beginning on the date of death of the decedent. When, through one devise or a series of devises, an heir's, devisee's, or legatee's voting shares in the corporation exceed 50%, there is a change in control of the corporation as of the date of death of the last decedent causing the amount of stock held by one individual to exceed 50%..

Based on the foregoing and presuming that Corporation's stock bequeathed/deviseed to N were voting shares, I 's 25% transfer to N occurred on the date of his death in 1975. R 's 25% transfer to N occurred on the date of his death in 1979, (whereupon, N held 50% of the ownership interest in Corporation). When F died on April 4, 1993, leaving to N an additional 6.25% ownership interest in Corporation, N acquired control of Corporation (more than 50% of its ownership interests), resulting in a 100 percent change in ownership of the Corporation's property at that time.

The only exception to this conclusion would be the unlikely possibility that the executor(s) of any of one or more of the three estates (I 's, R 's, F 's) voted for his/her own benefit, the shares bequeathed or devised to N, and in effect, transferred beneficial ownership of those shares to himself/herself, thereby preventing N from acquiring control. (See Eisenlauer Memorandum, April 11, 1983, attached, where co-executor and co-trustee made such a power play and transferred corporate control themselves.) It does not appear from the facts submitted, however, that such was the case, and it is not mentioned by N 's attorney as a reason why she could not have acquired control of Corporation. Moreover, pursuant to the Twelfth Article of the Last Will and Testament of I, N is one of the

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Co-Executors of his will. Copies of the others wills have not been provided. Therefore, since N obtained control of Corporation through the transfer of the corporate stock occurring as the direct result of the death of F , there was, at that time, a change in ownership of the real property owned by Corporation under Section 64, subdivision (c).

KEC
Attachments

cc: Mr. John Hagerty, MIC:63
Ms. Jennifer Willis, MIC:70

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