

Memorandum

To : Mr. Don Davis

Date September 29, 1987

From : Michele Hicks

Subject : Change in Control of Second and Third Tier Subsidiaries When Parent Corporation Changes Ownership

You inform us that you are increasingly encountering the argument from attorneys when requesting information concerning change in control of a parent corporation that because the real property is held by a second or third tier subsidiary, Revenue and Taxation Code section 64(c) does not apply. You request our response to this argument.

Revenue and Taxation Code section 64(c) provides that a change in ownership occurs "when a corporation...obtains control...in any corporation...." Control is defined in section 25105 as either "direct or indirect." Also, Rule 462(j)(4)(A) states that "[w]hen any corporation, partnership, other legal entity or any person: (iii) obtains direct or indirect ownership or control of more than 50 percent of the total ownership interest in any other legal entity...all of the property owned directly or indirectly by the acquired legal entity is deemed to have undergone a change a ownership."

The issue of whether a change in control of a parent corporation also results in a change in control of a subsidiary was decided in Sav-on Drugs, Inc. v. County of Orange (1987) 190 Cal.App.3d 1611. The court held that a change in control of the parent resulted in a change in control of its subsidiary, and, therefore, a change in ownership of real property owned by the subsidiary. The court stated its position succinctly at page 1626: "The definition of control is simple, a majority of shares held directly or indirectly." The Sav-on court even suggested that the will of the electorate in enacting Proposition 13 (article XIII A of the Constitution) would have been derogated if section 64(c) were so narrowly interpreted as not to apply to subsidiaries. The court stated at 1622:

"Moreover, to adopt plaintiffs' interpretation would effectively stifle the electorate's intent, as construed by the Legislature, that a change in control, direct or indirect, will permit a reassessment. Any reassessment

could be avoided by a simple step transaction involving the creation of a wholly owned subsidiary for the purpose of holding title to corporation realty, if plaintiffs' position were to be adopted." Id. at 1622.

The argument that section 64(c) may apply to a first tier subsidiary, but not a to a second or third tier subsidiary is the exact argument which the Sav-on court discredited. Using this reasoning, any reassessment could be avoided by a simple step transaction involving the creation of a wholly-owned subsidiary of a wholly-owned subsidiary for the purpose of holding title to corporate realty. We recommend that any failure to furnish information based upon this spurious argument be considered as a willful refusal and be treated in accordance with the penalty prescribed in Revenue and Taxation Code section 483(b).

If you have any questions or if you wish to discuss this further, please contact me.

MH/rz *Michelle F. Hicks*

cc: Mr. Richard H. Ochsner
Mr. Gordon P. Adelman
Mr. Robert Gustafson
Mr. Verne Walton