



STATE BOARD OF EQUALIZATION

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April 18, 1989

Dear Mr. :

Your letter dated March 3, 1989, to Mr. James J. Delaney, Chief Counsel, has been referred to the undersigned for reply. The facts set forth in your letter can be summarized as follows:

1. Z is a Nevada Corporation, which was incorporated in 1958. The ownership of its common and preferred stock is as set forth in that certain Exhibit A attached to your letter.
2. Z Corporation's only assets consist of cash and California real property held for rental and investment purposes.
3. No shareholder has transferred any real property to Z Corporation after March 1, 1975, and none of the real property presently owned by Z Corporation was acquired in a transaction excluded from change in ownership under the provisions of section 62(a)(2) of the Revenue and Taxation Code (unless otherwise noted, all code references shall be to the Revenue and Taxation Code).
4. X and Y are unrelated individuals. They intend to acquire the assets of Z Corporation pursuant to the following planned transactions:
 - (i) X and Y will each purchase one share of Z Corporation's voting common stock.
 - (ii) Concurrently, Z Corporation will distribute a specified amount of cash to its other shareholders in exchange for all remaining outstanding common and preferred stock owned by such other shareholders.
5. Following these transactions, X and Y will each own one share of Z Corporation's voting common stock. At such time, only two shares will be issued and outstanding, so X

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115
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April 18, 1989

and Y will each own 50 percent of the voting stock of Z Corporation. Under Z's Articles, X and Y will have equal voting power. Neither will have direct or indirect control over more than 50 percent of the voting stock of the corporation or the ability to elect more than 50 percent of the directors of the corporation.

You have requested our opinion of the change in ownership consequences of the above-described proposed transactions.

ANALYSIS

With regard to the purchase or transfer of corporate stock, subdivision (a) of section 64 provides as follows:

(a) Except as provided in subdivision (h) 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 interests, shall not be deemed to constitute a transfer of the real property of the legal entity.

Pursuant to the proffered facts, and as indicated in your letter, subdivision (h) of section 61 and subdivision (d) of section 64 are not applicable to the instant situation. However, subdivision (c) of said section 64 is relevant and states the following:

When a corporation, partnership, other legal entity or any other person obtains control, as defined in Section 25105, in any corporation, or obtains a majority ownership interest in any partnership or other legal entity through the purchase or transfer of corporate stock, partnership interest, or ownership interests in other legal entities, such purchase or transfer of such stock or other interest shall be a change of ownership of property owned by the corporation, partnership, or other legal entity in which the controlling interest is obtained.

Section 25105 of the Corporations Code defines ownership or control of a corporation as the direct or indirect ownership or control of more than 50 percent of the corporation's voting stock. Property Tax Rule 462.5(j)(4) set forth in Title 18 of the California Code of Regulations is to the same effect. In the instant matter, the offered facts provide that (1) X and Y

April 18, 1989

will each respectively acquire only 50 percent of the corporation's voting stock, and (2) that X and Y are unrelated individuals. Therefore, under the given facts, neither X nor Y have obtained control or majority ownership of the Z corporation within the meaning of section 64(c).

Therefore, the general rule of section 64 should apply, under which the proposed stock transactions will not be deemed to constitute transfers of the corporation's real property.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county. You may wish to consult the assessors of any counties in which the corporation owns real property in order to confirm that the described transactions will be treated in a manner consistent with the conclusions stated above.

Yours very truly,



Robert W. Lambert
Tax Counsel

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cc: Mr. John Hagerty
Mr. Robert Gustafson
Mr. Verne Walton