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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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GRAY DAVIS
Controller, Sacramento

BURTON W. OLIVER
Executive Director

No. 92/11

January 31, 1992

TO COUNTY ASSESSORS:

SALE AND LEASEBACK TRANSACTION, SUPREME COURT

In a recent California Supreme Court decision, Pacific Southwest Realty Co. v. County of Los Angeles (12/26/91), the Court held that a sale and leaseback is a change in ownership. This decision confirms our continuing position that a sale and leaseback constitutes a change in ownership for property tax purposes, as explained in our prior letter to assessor (No. 85/128).

This case involves the 1984 sale and leaseback of the Security Pacific Plaza office building which was sold to Metropolitan Life Insurance Company for $310 million. An earlier appellate court decision affirmed the judgment of the trial court holding that the Security Pacific Plaza office building sale and leaseback was not a change in ownership. This recent California Supreme Court decision reversed that decision and confirms that sale and leaseback transactions are changes in ownership for property tax purposes.

The California Supreme Court applied the three-part test contained in Section 60 of the Revenue and Taxation Code. That test states that a change in ownership means:

1. A transfer of a present interest in real property,

2. Including the beneficial use thereof,

3. The value of which is substantially equal to the value of the fee interest.

In the opinion of the California Supreme Court, the sale and leaseback transaction met the definition of a change in ownership as contained in the three-part test in all respects.

If you have any questions, please feel free to contact the Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:sk

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KENNETH CORY
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

August 8, 1986

No. 86/57

TO COUNTY ASSESSORS:

OFFICE OF ADMINISTRATIVE LAW REVIEW
OF LETTERS TO ASSESSORS

We have received county inquiries regarding the effect of recent Office of Administrative Law (OAL) determinations concluding that two Assessors Letters (No. 85/128 -- Sale and Leaseback Transactions and No. 82/89 Easements of Intercounty Pipelines) constitute regulations but are invalid and unenforceable as such because they have not been adopted pursuant to the procedures specified in the Administrative Procedures Act. It would not be productive to list here the many deficiencies in the reasoning employed in the OAL determinations. It is sufficient to point out that neither Assessors Letter was ever intended to be a regulation. For that reason, while the Board agrees that neither letter is a valid or enforceable regulation or is a legally binding document, that conclusion does not impair the correctness of the advice or information included therein.

As you know, instructions in the form of letters to assessors, handbooks, special topic surveys and other similar writings are not legally enforceable by the Board. They are simply advisory notice to the assessors of the Board's analysis, conclusions and recommendations concerning problems of mutual concern or are strictly informational reports of court decisions, legislative enactments or other factual information. When problems common to all assessors or boards of equalization are of such a nature that equity or law requires that uniform treatment be insured, the Board has adopted property tax rules which were incorporated in the California Administrative Code. Unlike instructions to assessors, these property tax rules (as well as forms and their instructions) are specifically made enforceable in a court of law by the express provisions of section 15606 of the California Government Code.

Speaking to the particular letters that gave rise to the OAL determinations, we remain of the opinion that sale and leaseback transactions which transfer a present ownership interest in the property on condition that the transferee lease all or part of the property to the transferor is a change in ownership unless it can be shown that the transfer was for financing purposes and created only a security interest in the transferee. This is, of course, very general advice. In any given case, the facts of that situation must control the assessor's ultimate determination.

As regards the question concerning the Board's assessment of land and rights of way owned by pipeline companies, the Board will continue assessing such lands unless and until the California Supreme Court, which now has the problem before it, decides that such assessments are in excess of the authority granted by Section 19 of article XIII of the California Constitution. The Board will also continue to keep assessors advised of important information regarding the assessment of pipeline properties as it develops.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

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Controller, Sacramento

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Executive Secretary

RECEIVED
DEC 06 1985
G. A. LEGAL

December 5, 1985

No. 85/12

TO COUNTY ASSESSORS:

SALE AND LEASEBACK TRANSACTIONS

On November 5, 1985 the Members of the State Board of Equalization directed Board staff to send this letter to you as a confirmation of their continuing position that sales and leasebacks constitute a change in ownership requiring reappraisal of the entire property sold. If the leaseback is for a term of 35 years or more (including renewal options), a second change in ownership occurs.

It has come to the Board's attention that in at least some sale and leaseback transactions the involved parties have couched the leaseback as an exception or reservation of an estate for years in the instrument by which title is being transferred to the buyer and then contend that such a provision brings the transaction within the "change in ownership" exclusion found in Revenue and Taxation Code Section 62(e).

The Board has consistently considered Section 62(e) to exclude only transfers that involve a true retention by the transferor of a present interest in the property and a conveyance to the transferee of only a future interest. In a sale and leaseback the purchaser-lessor receives title to the property, and the right to possession. The fact that the parties agree that the new owner will lease the property to the former owner in no way diminishes the purchaser's ownership interest any more than would a lease not preceded by a sale. The lease creates a landlord and tenant relationship which by operation of law gives the landlord the right to receive rent. What the purchaser-lessor has done is exercise the right of possession, a present beneficial use, by leasing the property in exchange for payment of rent. (Orbach's, Inc. v. Los Angeles County, 190 Cal. App. 2d 575.) A landlord's right to receive rent is a present interest in property that is assignable, may serve as security for a loan obtained by the lessor (Oakland Title Insurance and Guarantee Co., 122 CA 73), and arises out of the landlord's grant of the right to possession to the lessee. (Baker v. J. Maier & Zobelein Brewery, 140 C 530.)

While the term "reserves" in Section 62(e) is not specifically defined, it is evident from the Report of the Task Force on Property Tax Administration, January 22, 1979, at page 37, et seq., and the report prepared by the Assembly Revenue and Taxation Committee staff, entitled Implementation of

Proposition 13, Volume 1, Property Tax Assessment, October 29, 1979, at page 18, et seq., that both considered the exclusion to apply when the transferor retained an ownership interest in the property and the transferee did not receive a present beneficial interest.

Whatever the contentions of the parties to a sale and leaseback, it must be remembered that the use of the term "reserves" in a deed is not by itself sufficient evidence of the true intentions of the parties. The assessor must review all of the transfer documents to determine just what property interest has been transferred. When the purchaser-lessor pays for all interests in the property and the seller-lessee is required to pay rent for the use of all or part of the property and the purchaser-lessor has the other burdens and benefits of an owner, it is incorrect to conclude that the transfer is within the Section 62(e) exclusion.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

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No. 85/128

December 5, 1985

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Assessment Standards Division

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CHANGE IN OWNERSHIP

Sale and Leaseback Transactions. It has been the Board's longstanding position that sales and leasebacks constitute changes in ownership requiring reappraisal of the entire properties sold. If a leaseback is for a term of 35 years or more, a second change in ownership occurs.

Revenue and Taxation Code Section 62(e) excludes from change in ownership only transfers that involve a true retention by the transferor of a present interest in the property and a conveyance to the transferee of only a future interest. In the case of a sale and leaseback, the purchaser receives title to the property, and the right to a possession. The fact that the parties agree that the purchaser will lease the property to the former owner in no way diminishes the purchaser's ownership interest any more than would a lease not preceded by a sale. Rather, the leasing of the property to the former owner is merely the exercising of the right to possession, a present beneficial use, in exchange for the payment of rent. LTA 12/5/85 (No. 85/128); LTA 8/8/86 (No. 86/57).