



STATE BOARD OF EQUALIZATION

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Executive Director

February 18, 2016

Re: *Change in Ownership – F Enterprises, Inc.*
Assignment No.: 15-397

Dear Mr. _____ :

This is in response to your request for our opinion on the change in ownership consequences and the associated reporting requirements pertaining to certain statutory conversions of corporations into limited liability companies (LLCs) under California or Ohio law. As explained below, assuming the conversions meet the respective statutory requirements, it is our opinion that they would not result in reassessment of the properties directly or indirectly owned by the converting corporations or the creation of original co-owner status for the converted entities. Furthermore, no change in ownership reporting is required.

Facts

In your letter, you explain the following:

1. F _____ Enterprises, Inc. (FE), an Ohio corporation, is a publicly traded real estate management and development company based in Cleveland, Ohio. It currently operates through a complex structure of holding companies.
2. FE wholly owns F _____ Rental Properties Corporation (FRPC), also an Ohio corporation. FRPC owns interests in multiple tiers of corporate subsidiaries and entities, some of which hold interests in California real properties.
3. FE will be restructured so that it can elect to be treated as a real estate investment trust (REIT)¹ for federal income tax purposes. In connection with that restructuring, certain FE and FRPC subsidiaries that are currently corporations will be converted into single member limited liability companies (LLCs) and will elect to be treated as disregarded entities for federal income tax purposes.

¹ A REIT election is only a tax treatment election. There is no formation of any new entity and no transfer of any entity interest or real property. (See Internal Revenue Code, § 856 et seq.) Thus, the REIT election will not result in a change in ownership of any real property owned by the entity making a REIT election for federal income tax purposes.

You provided charts and descriptions of the proposed conversions, relating to 17 California properties, of certain FE and FRPC subsidiaries, from corporations to LLCs pursuant to either California or Ohio law. Based on our review, the 17 scenarios are substantially similar and work essentially the same way, differing only in the tiers involved, the entity names, and the ownership percentage at each tier. To avoid repetition, we analyze, by way of example, the scenario that you provided for one of the properties, _____ Center. Your letter provides the following description:

Current Ownership

Center is owned in fee by _____ Mall LLC, a Delaware limited liability company ("Mall"). Mall is owned indirectly 50 percent by _____, Inc., a California corporation ("M _____"). M _____ is a wholly owned subsidiary of F _____ Group, Inc., an Ohio corporation ("F Group").

Proposed Transaction

The indirect 50 percent owner of _____ Mall, M _____, will undergo a statutory conversion under California law to become a limited liability company, _____ Street, LLC. Next, F Group will undergo a statutory conversion under Ohio law to become a limited liability company, F _____ Group, LLC ("F Group LLC"). Last, FRPC will undergo a statutory conversion under Ohio law to a limited liability company, F _____ Rental Properties, LLC ("FRP LLC").

You ask us to confirm your understanding that: 1) the conversions at issue will not result in any changes in ownership; 2) no original co-owner status will be created as a result of any of the conversions; and 3) there is no need to file Form BOE-100-B, Statement of Change in Control and Ownership of Legal Entities (Form BOE-100-B) upon completion of the conversions.

Law and 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. A change in ownership is defined in Revenue and Taxation Code section² 60 as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest."

Under section 62, subdivision (a)(2), transfers 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 constitute a change in ownership. (Rev. & Tax Code, § 62, subd. (a)(2); Property Tax Rule³ 462.180, subdivision (b)(2).) Similarly, Rule 462.180, subdivision (d)(4) provides that transfers of legal entity interests that result solely in a change in the method of holding title, and in which proportional

² All further statutory references are to the California Revenue and Taxation Code, unless otherwise indicated.

³ All Rule references are sections to title 18 of the California Code of Regulations.

ownership interests in all real property represented by the transferred interests remain the same after the transfer, do not constitute a change in ownership. However, whenever a transfer of ownership interests in a legal entity (transferred entity) is excluded from change in ownership under Rule 462.180, subdivision (d)(4), immediately after the transfer, the holders of the interests in the legal entity to which the interests were transferred (transferee entity) become "original co-owners" with respect to the legal entity ownership interests of the transferee entity for purposes of determining the change in ownership consequences of any subsequent transfers of transferee entity interests. (See Rule 462.180, Example 10.)

Furthermore, Rule 462.180, subdivision (d)(4) states that the proportional ownership interest exclusion shall not apply to a statutory conversion. It states, in relevant part:

This provision [excluding proportional ownership transfers of legal entity interests and the creation of original co-owners] *shall not apply to a statutory conversion* or statutory merger of a partnership into a limited liability company or other partnership (or a limited liability company into a partnership) when the law of the jurisdiction of the converted or surviving entity provides that such entity remains the same entity or succeeds to the assets of the converting or disappearing entity without other act or transfer and the partners or members of the converting or disappearing entity maintain the same ownership interest in profits and capital of the converted or surviving entity that they held in the converting or disappearing entity. (Emphasis added.)

Section 64, subdivision (a) provides that the purchase or transfer of ownership interests in a legal entity does not constitute a transfer of the legal entity's real property. One exception to this rule is provided in section 64, subdivision (c)(1) which provides that when a legal entity or other person obtains control through direct or indirect ownership or control of more than 50 percent of a corporation's voting stock, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity, through the purchase or transfer of that corporate stock or other interest, there is a change in ownership of the real property owned by that corporation or other legal entity in which the controlling interest is obtained. (See also Rule 462.180, subd. (d)(1).)

Another exception to section 64, subdivision (a) is provided in section 64, subdivision (d), which provides that whenever cumulatively more than 50 percent of the total original co-owner interests in a transferee entity, as discussed above, are transferred by any of the original co-owners in one or more transactions, a change in ownership of that real property that was previously excluded from change in ownership occurs. (See also Rule 462.180, subd. (d)(2).)

A statutory conversion in California is a transaction pursuant to Corporations Code sections 1151, 15911.09, 16902, or 17710.02, whereby an entity converts to another entity of a different type. The entity that undergoes the conversion is called the converting or disappearing entity and the resulting entity is called the converted or surviving entity. (Corp. Code, §§ 1150, 15911.01, 16901, 17710.01.) As relevant here, Corporations Code sections 1158 and 17710.09 govern the conversion process involving corporations and LLCs, and both sections contain identical language that state that "[a]n entity that converts into another entity ... is for all purposes ... the same entity that existed before the conversion," (Corp. Code, §§ 1158, subd. (a), 17710.09, subd. (a)) and that upon a conversion taking effect, "[a]ll the rights and property,

whether real, personal, or mixed, of the converting entity ... are vested in the converted entity." (Corp. Code, §§ 1158, subd. (b) (1), 17710.09, subd. (b)(1).)

Similarly, under Ohio law, a corporation may convert into an LLC. (Ohio Rev. Code, §§ 1701.792, subd. (A), 1705.361, subd. (A).) Upon conversion, the converting entity is continued in the converted entity, and the converted entity possesses all assets and property of the converting entity without any further act or deed. (Ohio Rev. Code, §§ 1701.821, subd. (A)(1) & (3)(a)(i), 1705.391, subd. (A)(1) & (3)(a)(i).) In other words, title to real property vests automatically by operation of law upon a statutory conversion under the Ohio law.

1) Change in Ownership Resulting from Conversion

As applied here, in the scenario for _____ Center described above, M _____ will undergo a statutory conversion under California law to become _____ Street, LLC; F Group will undergo a statutory conversion under Ohio law to become F Group LLC; and FRPC will undergo a statutory conversion under Ohio law to become FRP LLC. All three of these statutory conversions from corporations to LLCs are under either California or Ohio law. As cited above, the laws of both states provide that the conversion vests in the converted entity all the assets of the converting entity without any further act or deed. Therefore, since there is no transfer of any assets, no change in ownership, as defined in section 60, of any real property owned by any of the converting entities can occur. In addition, since under both California and Ohio law, there is no transfer of any assets, including of legal entity interests, no statutory conversion of any of the three entities can result in a change in control of any of their lower-tier entities pursuant to section 64, subdivision (c)(1). Finally, if any of the converting entities are currently original co-owners, their conversions will not result in the counting or cumulating of any original co-owner shares pursuant to section 64, subdivision (d), since, again, under either California or Ohio law, a statutory conversion results in no transfer of any assets including legal entity interests.

For the same reasons as stated above, the remaining 16 proposed conversions you listed, if meeting the statutory conversion requirements under either California or Ohio law, will not result in a change in ownership of any property owned directly or indirectly by the converting entities.

2) Original Co-Owner Status from Conversions

Rule 462.180, subdivision (d)(4) makes clear that the section 62, subdivision (a)(2) proportional ownership exclusion does not apply to statutory conversions. This is because, as explained above, a statutory conversion does not result in a transfer of real property or legal entity interests and, therefore, no exclusion from change in ownership, including under section 62, subdivision (a)(2) is necessary. Since there is no need to use section 62, subdivision (a)(2) as an exclusion upon a statutory conversion, no original co-owner status can result from any of the proposed statutory conversions. (See Rev. & Tax. Code, § 64, subd. (d).)

3) Form BOE-100-B Filing Requirements

Sections 480.1 and 480.2 set forth the circumstances under which a Form 100-B must be filed. Section 480.1, subdivision (a) provides that whenever there is a change in control of a corporation, partnership, limited liability company, or other legal entity as defined in section 64,

subdivision (c)(1), the person or legal entity acquiring control of the legal entity must file a Form 100-B with the Board within 90 days from the date of the change in control. Section 480.2, subdivision (a) requires a Form 100-B be filed whenever more than 50 percent original co-owner interest of any corporation, partnership, limited liability company, or other legal entity, as defined in section 64, subdivision (d), have been transferred.

As discussed above, a statutory conversion does not result in a transfer of real property, and, under both California and Ohio law, the converted entity is the same entity as the converting entity. Additionally, no original co-owners interest would result. Therefore, a statutory conversion alone, cannot trigger either a change in control as defined in section 64, subdivision (c)(1), or the application of the original co-owner rule under section 64, subdivision (d). As a result, neither section 480.1 or 480.2 is triggered, and, thus, there is no need to file Form BOE-100-B upon completion of the conversions.

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. If you have any additional questions, please feel free to contact me.

Sincerely,

/s/ Mengjun He

Mengjun He
Tax Counsel III (Specialist)

MH: yg

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cc: Honorable Kristen Spears
President, California Assessors' Association
Placer County Assessor

Mr. Dean Kinnee MIC:63
Mr. David Yeung MIC:61
Mr. Todd Gilman MIC:70