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July 17, 1997

Honorable Lawrence E. Stone
Office of the County Assessor
County Government Center, East Wing
70 West Hedding Street
San Jose, CA 95110-1771

Attn: David Turner, Chief of
Assessment Standards and Services

Dear Mr. Stone:

This is in response to your letter of June 2, 1997 in which you request an opinion concerning the possible reassessment of "foreign improvements" located on land owned by a state-assessed railroad. Based on the transfer of land that resulted when Southern Pacific Railroad merged with Union Pacific Railroad you ask the following questions:

Are "foreign improvements" reassessed when the railroad land is transferred?

If yes, what is the date of the transfer?

Does the "35-year" rule for reassessment of leases apply?

Will the SBE be sending a "LEOP" report or other notice?

For the reasons set forth below, foreign improvements that are located on state-assessed land are not reassessed when the underlying state-assessed land is transferred. A "foreign improvement," as viewed by staff, is an improvement owned by a person or persons other than the landowner and therefore should be assessed apart from the land. Thus, a transfer of the separately owned and separately assessed land would not effect a transfer of the improvement unless the improvement was transferred with the land.

Law and Analysis

The basic definition of change in ownership is set forth in Section 60 of the Revenue and Taxation Code which provides:

A "change in ownership" means 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.

Despite the unqualified term "real property" as used in section 60, the California Supreme Court has interpreted the change in ownership and property tax limitation provisions as applying only to locally-assessed real property and not to state-assessed real property, *ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859. All state-assessed property is annually assessed at fair market value on the lien date. Therefore, the transfer of land from one state-assessee to another state-assessee, such as occurred when Southern Pacific Railroad merged with Union Pacific Railroad would not result in a "change in ownership" of that land for Article XIII A reassessment purposes because those provisions have no application to state-assessed property.

"Foreign improvements" as viewed by staff are improvements owned by a person or persons other than the owner of the land on which they are situated. The railroad land in this instance may be state-assessed property while the improvements, as you indicate, are assessed by the county. Because the land and improvements are separately owned, the transfer of the underlying land by the landowner does not result in a transfer of the improvements located thereon. Based on available information, the merger of Southern Pacific Railroad with Union Pacific Railroad resulted in the transfer of only railroad-owned property and not the foreign improvements located on railroad-owned land. As stated above, the state-assessed land is not subject to "change in ownership" because those provisions are inapplicable to state-assessed property and the improvements are not subject to "change in ownership" because they have not been transferred.

In response to your follow-up questions, there is no date of transfer of the improvements because there has been no transfer. Second, the "35-year" rule for reassessment of leases would not be applicable because the improvements are separately owned and not leased from the railroad. Finally, it is my understanding that a LEOP report will be issued, but foreign improvements will not be reflected on the report because those improvements are not owned by the railroad and were not subject to a "change in ownership."

July 17, 1997

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.

Very truly yours,



Lou Ambrose
Tax Counsel

LA:ba

cc: Mr. Jim Speed, MIC:63
Mr. Dick Johnson, MIC:64
Mr. Ramon Hirsig, MIC:61
Mr. Harold Hale, MIC:61
Mr. Peter Gaffney, MIC:64

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