

Tax Alert For Corporations, Partnerships and LLCs Owning Real Property in California

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The California Revenue and Tax Code has recently been amended to radically change the reporting requirements that relate to the change of control in the ownership of legal entities in California that own real property. The changes subject such entities to significant penalties for failure to timely report the change.

Prior to the recent amendment, pursuant to Prop 13, real property held by a legal entity is only subject to revaluation for real property tax purposes when it is transferred or sold or when the owning entity (or individual) has a change in control (a transfer of more than 50% of the ownership interests), such as from a merger or reverse merger. Since changes in control do not generally result in the recording of a real property transfer deed or other document that would give notice of a change in ownership, the various county assessors and the State Board of Equalization (SBE) often are not aware of such transactions. While the existing California tax law required the legal entity to file a Statement of Change of Control (Form BOE-100-B) with the SBE within 45 days following the change in control, there was no penalty for failure to file such a notice unless the entity failed to timely respond to a request for such a filing from the SBE or a county assessor. Further, if a penalty was assessed for failure to timely respond (the penalty was 10% of the unpaid taxes based upon the new assessment), it was abated if the notice was filed within 60 days following a notice of the imposition of the penalty.

Senate Bill 816 amends California Revenue and Taxation Code Section 408 et seq., to provide that the 10% penalty will be imposed if the legal entity does not make the 45-day filing, *regardless of whether or not a notice is issued by the SBE or a county assessor*. If the penalty is imposed under the new statute, only the local county board of supervisors has the authority to abate it if the reporting entity can prove to the satisfaction of the county board that the failure to file was not willful.

In addition, there are provisions in the new legislation that require cooperation between the county assessors and other state and county agencies to exchange confidential information, such as whether or not a transfer tax might also be owing on the transfer of ownership of real property based upon the value of the real property transferred.