

California Real Estate Tax Alert

NEW REPORTING RULES INCLUDING PENALTIES EFFECTIVE JANUARY 1, 2010 FOR CERTAIN CHANGES OF OWNERSHIP INVOLVING REAL PROPERTY

California Senate Bill No. 816, enacted on October 11, 2009, has significantly revised the reporting requirements and penalty provisions for any entity (i.e., corporation, partnership, LLC) undergoing a transaction acquiring California real property that constitutes a “change in ownership” or “change in control” under Proposition 13.

A summary of the key revisions is below:

- **Change in Ownership Reporting** – A change in control or change in ownership of a entity owning an interest in California real property must be **self-reported** to the Board of Equalization on Form BOE-100-B (see attached copy), *Statement of Change in Control and Ownership of Legal Entities*, within 45 days of the date of the transaction by the **acquiring** entity. Please note that there is no extension of time to file.

Failure to file such form can result in a penalty assessment of 10% of the annual property tax based on the new assessed value.

- **Assessors’ Records** – Expands the list of state and local agencies that can obtain appraisal records to include the county recorder for the purpose of determining whether the documentary transfer tax should be imposed.
- **Penalty Abatement** – Removes the automatic penalty abatement when a legal entity fails to respond to a Board of Equalization written request to file a change in ownership statement. An entity seeking an abatement of penalty for reasonable cause must now file an application for abatement of penalty with the county board of supervisors.
- **Documentary Transfer Tax Appeal** – Specifies that the value of property determined for purposes of the documentary transfer tax is not binding on the value determined for property tax purposes by the assessor, the assessment appeals board, or a court of law reviewing property tax values established by an appeals board.

Implications

Pursuant to Proposition 13, one of the requirements needed to re-appraise real property at fair market value is a “change of control” or a “change of ownership” of a legal entity that owns an interest in California real property.

A “change in control” occurs when a direct or indirect owner of an entity owner of California real property acquires more than 50% of the beneficial interest of such entity.

A “change of ownership” results from the direct transfer of an interest in California real property to and by legal entities or a transfer of an ownership interest in a legal entity⁰ that owns California real property. A transfer of an ownership interest generally occurs when either a person or an entity acquires more than a 50% ownership interest in the legal entity or in the situation where an entity receives real property in an exempt transfer, and subsequently, the co-owners transfer more than 50% of their original co-ownership interests.

The distinction between the two “change of ownership” methods is that a direct transfer of an interest in California real property should be reported to the local county assessor’s office and is subject to a different set of reporting and penalty provisions.

On the other hand, “changes in control” and “changes in ownership” involving the transfers of ownership interests in legal entities that own California real property are subject to the provisions outlined above.

As a result, clients will now need to be pro-active in evaluating the need to file a Form 100-B for every transaction involving entities that own California real property. Since, there is a relatively short window to file the Form 100-B, it is critical that clients include their K&A advisor in the front-end of any proposed transaction involving California real property to avoid the potential for significant penalties. If you have any questions, please contact Bill Wall or Marc Armstrong at (818) 971-5100.

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