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May 19, 2010

TO COUNTY ASSESSORS:

No. 2010/028

**CHANGE IN CONTROL OR OWNERSHIP OF LEGAL ENTITIES:
 CHANGES TO FILING REQUIREMENTS AND PENALTY PROVISIONS**

Effective January 1, 2010, Senate Bill 816 (Stats. 2009, Ch. 622) amended, in part, Revenue and Taxation Code¹ sections 480.1, 480.2, 482, and 483 relating to change in control and change in ownership filing requirements for legal entities that own California real property. Senate Bill (SB) 816 did not modify the change in ownership provisions as they relate to real property owned by legal entities. Rather, the bill strengthened the reporting requirements and penalties in order to aid assessors in the more timely discovery of legal entity ownership interest transfers that result in real property being subject to reassessment under existing statutes.

Discovery Methods

Sections 480.1 and 480.2 require a legal entity to file a *Statement of Change in Control and Ownership of Legal Entities* (Statement) with the Board of Equalization (Board) within 45 days of the date of a change in control (CIC) or change in ownership (CIO) of a legal entity pursuant to section 64(c) or 64(d), which pertain to the acquisition or transfer of ownership interests in a legal entity.² However, the Board also discovers CIC or CIO through other sources such as information it obtains from the Franchise Tax Board (FTB), county assessors, and business publications and news articles.³ The Board sends Statements to legal entities based on information from various sources in order to obtain specific information on a transaction.

Changes to Filing Requirements and Penalty Application

A legal entity has always been required to file a Statement within 45 days of the date of change in control or ownership; however, prior to January 1, 2010, the legal entity was subject to penalty *only* if it did not respond timely to the Board's written request to file a Statement. The amendments made by SB 816 serve to establish a penalty for those legal entities that do not independently self-report a CIC or CIO to the Board within 45 days of the event date. Specifically, SB 816 amended sections 480.1, 480.2, and 482(b) to provide that a penalty applies if a Statement is not filed with the Board within 45 days of the *earlier* of either: (1) the date of change in control or change in ownership under section 64(c) or 64(d) of the legal entity (the event date); or (2) the date the Board makes a written request to file a Statement.

¹ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

² The Statement (form BOE-100-B), its instructions, and information about filing requirements is available on the Board's website at: www.boe.ca.gov/proptaxes/leop.htm.

³ Section 64(e) requires the FTB to assist the Board in discovering CIC and CIO of legal entities; it does so by including certain questions on the tax returns for legal entities. The FTB transmits to the Board the names and addresses of legal entities that reported involvement in a CIC and/or CIO on its state income tax return.

Thus, in practical application, when there is a CIC or CIO, a legal entity must file a *Statement of Change in Control and Ownership of Legal Entities* (form BOE-100-B) with the Board within 45 days of the event, with or without any written request being made by the Board, or the entity is subject to a 10 percent penalty under section 482(b). The amount of the penalty is 10 percent of the taxes applicable to the new base year value of the real property owned by the legal entity.⁴

The amendments of SB 816 do not change the requirement to file a *Statement of Change in Control and Ownership of Legal Entities* when a written request has been sent by the Board; nor does it change the associated penalties for failure to respond to the Board's request within 45 days. The penalty for failure to respond timely to a Board's written request to file a statement applies whether or not a change in control or change in ownership actually occurred. The amount of penalty under section 482(b) is either: (1) 10 percent of the taxes applicable to the new base year value of the real property owned by the legal entity, if the entity **has** undergone a change in control or change in ownership; *or* (2) 10 percent of the current year's taxes on the real property owned by the entity if the entity **has not** undergone a change in control or change in ownership.

Changes to Notification of Penalty

Prior to January 1, 2010, *the Board* notified an entity that it was subject to penalty and informed them of penalty abatement procedures by issuing a penalty notice if the entity did not file within 45 days of the Board's written request. SB 816 changes the penalty notification requirements and requires *the assessor* to notify an entity of a penalty.

With respect to application of penalties added to either the secured or unsecured roll pursuant to section 482, section 482(f) requires that notice be mailed by the assessor to the transferee at his or her address contained in any recorded instrument or document evidencing a transfer of interest in real property or at any address reasonably known to the assessor. The Board will notify assessors of legal entities that are subject to penalty so that the assessor can properly notify entities of such penalty.

As a result of these changes, this letter supersedes Letters To Assessors 84/30, LEOP Penalty Procedures (March 13, 1984).

Changes to Penalty Abatement

Prior to January 1, 2010, section 482(b) provided that the penalty for failing to file a statement within 45 days of the Board's request would be automatically extinguished if the person or legal entity filed a complete Statement with the Board no later than 60 days after the date the person or legal entity was notified by the Board of the penalty. Section 483(c) sets forth the procedures for requesting penalty abatement when the reason for not filing a statement was due to reasonable cause and not due to willful neglect.

Senate Bill 816 amended sections 482(b) and 483 to delete the automatic extinguishment of the penalty for failure to file a timely Statement. After January 1, 2010, a legal entity must seek penalty abatement for reasonable cause under section 483(c) by filing a written application for abatement of penalty with the county board of supervisors within 60 days of being notified of the penalty by the county assessor.⁵ In cases where the affected legal entity owns real property in multiple counties, a written application for abatement must be submitted to each county board of supervisors.⁶ Note, in counties where the board of supervisors has created one or more

⁴ If the CIC or CIO is otherwise excluded from reassessment, then the penalty is on the current year's taxes.

⁵ The State Board of Equalization and the Assessor do not have the authority to abate the penalty.

⁶ Before the penalty can be abated, the Statement must be filed with the State Board of Equalization.

assessment appeals boards, written application must be made to the assessment appeals board. Section 1605.5(b) provides that a county board⁷ shall hear and decide issues with respect to penalties assessed under section 482. However, before the penalty can be abated, the Statement must be filed with the State Board of Equalization.

Calculation of Penalty

The penalty under section 482(b) is 10 percent of the taxes applicable to the new base year value reflecting the change in control or change in ownership of the real property owned by the corporation, partnership, or legal entity; or 10 percent of the current year's taxes on that property if no change in control or change in ownership occurred. With respect to the penalty where no change occurred, it is calculated based upon the current year's (July 1 to June 30) taxes in which the 45-day period under section 482 expired. Section 482(d) specifies that the penalty shall be added to the roll in the same manner as a special assessment and treated, collected, and subject to the same penalties for the delinquency as all other taxes on the roll in which it is entered.

A copy of the amended sections in strikeout/underline format is enclosed. If you have any questions regarding these new filing or penalty requirements, please contact our Legal Entity Ownership Program at 916-323-5685.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:lt
Enclosure

⁷ Section 1601 defines "county board" as a county board of supervisors meeting as a county board of equalization or an assessment appeals board.

Section 480.1 of the Revenue and Taxation Code is amended to read:

480.1. (a) Whenever there is a change in control of any corporation, partnership, limited liability company, or other legal entity, as defined in subdivision (c) of Section 64, a signed change in ownership statement as provided for in subdivision (b), shall be filed by the person or legal entity acquiring ownership control of ~~such the~~ corporation, partnership, limited liability company, or other legal entity with the board at its office in Sacramento within 45 days from the date of the change in control of the corporation, partnership, limited liability company, or other legal entity. The statement shall list all counties in which the corporation, partnership, limited liability company, or legal entity owns real property.

(b) The change in ownership statement as required pursuant to subdivision (a), shall be declared to be true under penalty of perjury and shall give such information relative to the ownership control acquisition transaction as the board shall prescribe after consultation with the California Assessors' Association. The information shall include, but not be limited to, a description of the property owned by the corporation, partnership, limited liability company, or other legal entity, the parties to the transaction, and the date of the ownership control acquisition. The change in ownership statement shall not include any question which is not germane to the assessment function. The statement shall contain a notice that is printed, with the title at least 12-point boldface type and the body in at least 8-point boldface type, in the following form:

"Important Notice"

"The law requires any person or legal entity acquiring ownership control in any corporation, partnership, limited liability company, or other legal entity owning real property in California subject to local property taxation to complete and file a change in ownership statement with the State Board of Equalization at its office in Sacramento. The change in ownership statement must be filed within 45 days from the date of the change in control of a corporation, partnership, limited liability company, or other legal entity. The law further requires that a change in ownership statement be completed and filed whenever a written request is made therefor by the State Board of Equalization, regardless of whether a change in control of the legal entity has occurred. The failure to file a change in ownership statement within 45 days from the earlier of the date of the change in control of the corporation, partnership, limited liability company, or other legal entity, or the date of a written request by the State Board of Equalization, results in a penalty of 10 percent of the taxes applicable to the new base year value reflecting the change in control of the real property owned by the corporation, partnership, limited liability company, or legal entity (or 10 percent of the current year's taxes on that property if no change in control occurred). This penalty will be added to the assessment roll and shall be collected like any other delinquent property taxes, and be subject to the same penalties for nonpayment."

(c) In the case of a corporation, the change in ownership statement shall be signed either by an officer of the corporation or an employee or agent who has been designated in writing by the board of directors to sign such statements on behalf of the corporation. In the case of a partnership, limited liability company, or other legal entity, the statement shall be signed by an officer, partner, manager, or an employee or agent who has been designated in writing by the partnership, limited liability company, or legal entity.

(d) No person or entity acting for or on behalf of the parties to a transfer of real property shall incur liability for the consequences of assistance rendered to the transferee in preparation of any change in ownership statement, and no action may be brought or maintained against any such person or entity as a result of ~~such that~~ assistance.

Nothing in this section shall create a duty, either directly or by implication, that such assistance be rendered by any person or entity acting for or on behalf of parties to a transfer of real property.

(e) The board or assessors may inspect any and all records and documents of a corporation, partnership, limited liability company, or legal entity to ascertain whether a change in control as defined in subdivision (c) of Section 64 has occurred. The corporation, partnership, limited liability company, or legal entity shall upon request, make ~~such~~ those documents available to the board during normal business hours.

Section 480.2 of the Revenue and Taxation Code is amended to read:

480.2. (a) Whenever there is a change in ownership of any corporation, partnership, limited liability company, or other legal entity, as defined in subdivision (d) of Section 64, a signed change in ownership statement as provided in subdivision (b) shall be filed by ~~such~~ the corporation, partnership, limited liability company, or other legal entity with the board at its office in Sacramento within 45 days from the date of the change in ownership of the corporation, partnership, limited liability company, or other legal entity. The statement shall list all counties in which the corporation, partnership, limited liability company, or legal entity owns real property.

(b) The change in ownership statement required pursuant to subdivision (a) shall be declared to be true and under penalty of perjury and shall give such information relative to the ownership interest acquisition transaction as the board shall prescribe after consultation with the California Assessors' Association. The information shall include, but not be limited to, a description of the property owned by the corporation, partnership, limited liability company, or other legal entity, the parties to the transaction, the date of the ownership interest acquisition, and a listing of the "original co-owners" of the corporation, partnership, limited liability company, or other legal entity prior to the transaction. The change in ownership statement shall not include any question which is not germane to the assessment function. The statement shall contain a notice that is printed, with the title in at least 12-point boldface type and the body in at least 8-point boldface type, in the following form:

"Important Notice"

"The law requires any corporation, partnership, limited liability company, or other legal entity owning real property in California subject to local property taxation and transferring shares or other ownership interest in such legal entity which constitute a change in ownership pursuant to subdivision (d) of Section 64 of the Revenue and Taxation Code to complete and file a change in ownership statement with the State Board of Equalization at its office in Sacramento. The change in ownership statement must be filed within 45 days from the date that shares or other ownership interests representing cumulatively more than 50 percent of the total control or ownership interests in the entity are transferred by any of the original co-owners in one or more transactions. The law further requires that a change in ownership statement be completed and filed whenever a written request is made therefor by the State Board of Equalization, regardless of whether a change in ownership of the legal entity has occurred. The failure to file a change in ownership statement within 45 days from the earlier of the date of the change in ownership of the corporation, partnership, limited liability company, or other legal entity, or the date of a written request by the Board of Equalization, results in a penalty of 10 percent of the taxes applicable to the new base year value reflecting the change in ownership of the real property owned by the

corporation, partnership, limited liability company, or legal entity (or 10 percent of the current year's taxes on that real property if no change in ownership occurred). This penalty will be added to the assessment roll and shall be collected like any other delinquent property taxes, and be subject to the same penalties for nonpayment."

(c) In the case of a corporation, the change in ownership statement shall be signed either by an officer of the corporation or an employee or agent who has been designated in writing by the board of directors to sign such statements on behalf of the corporation. In the case of a partnership, limited liability company, or other legal entity, the statement shall be signed by an officer, partner, manager, or an employee or agent who has been designated in writing by the partnership, limited liability company, or legal entity.

(d) No person or entity acting for or on behalf of the parties to a transfer of real property shall incur liability for the consequences of assistance rendered to the transferee in preparation of any change in ownership statement, and no action may be brought or maintained against any such person or entity as a result of ~~such~~ that assistance.

Nothing in this section shall create a duty, either directly or by implication, that such assistance be rendered by any person or entity acting for or on behalf of parties to a transfer of real property.

(e) The board or assessors may inspect any and all records and documents of a corporation, partnership, limited liability company, or legal entity to ascertain whether a change in ownership as defined in subdivision (d) of Section 64 has occurred. The corporation, partnership, limited liability company, or legal entity shall upon request, make such *those* documents available to the board during normal business hours.

Section 482 of the Revenue and Taxation Code is amended to read:

482. (a) If a person or legal entity required to file a statement described in Section 480 fails to do so within 45 days from the date of a written request by the assessor, a penalty of either: (1) one hundred dollars (\$100), or (2) 10 percent of the taxes applicable to the new base year value reflecting the change in ownership of the real property or manufactured home, whichever is greater, but not to exceed two thousand five hundred dollars (\$2,500) if the failure to file was not willful, shall, except as otherwise provided in this section, be added to the assessment made on the roll. The penalty shall apply for failure to file a complete change in ownership statement notwithstanding the fact that the assessor determines that no change in ownership has occurred as defined in Chapter 2 (commencing with Section 60) of Part 0.5. The penalty may also be applied if after a request the transferee files an incomplete statement and does not supply the missing information upon a second request.

(b) If a person or legal entity required to file a statement described in Section 480.1 or 480.2 fails to do so within 45 days from the earlier of (1) the date of the change in control or the change in ownership of the corporation, partnership, limited liability company, or other legal entity, or (2) the date of a written request by the State Board of Equalization, a penalty of 10 percent of the taxes applicable to the new base year value reflecting the change in control or change in ownership of the real property owned by the corporation, partnership, or legal entity, or 10 percent of the current year's taxes on that property if no change in control or change in ownership occurred, shall be added to the assessment made on the roll. The penalty shall apply for failure to file a complete statement notwithstanding the fact that the board determines that no change in control or change in ownership has occurred as defined in subdivision (c) or (d) of

Section 64. The penalty may also be applied if after a request the person or legal entity files an incomplete statement and does not supply the missing information upon a second request. That penalty shall be in lieu of the penalty provisions of subdivision (a). ~~However, the penalty added by this subdivision shall be automatically extinguished if the person or legal entity files a complete statement described in Section 480.1 or 480.2 no later than 60 days after the date on which the person or legal entity is notified of the penalty.~~

(c) The penalty for failure to file a timely statement pursuant to Sections 480, 480.1, and 480.2 for any one transfer may be imposed only one time, even though the assessor may initiate a request as often as he or she deems necessary.

(d) The penalty shall be added to the roll in the same manner as a special assessment and treated, collected, and subject to the same penalties for the delinquency as all other taxes on the roll in which it is entered.

(1) When the transfer to be reported under this section is of a portion of a property or parcel appearing on the roll during the fiscal year in which the 45-day period expires, the current year's taxes shall be prorated so the penalty will be computed on the proportion of property which has transferred.

(2) Any penalty added to the roll pursuant to this section between January 1 and June 30 may be entered either on the unsecured roll or the roll being prepared. After January 1, the penalty may be added to the current roll only with the approval of the tax collector.

(3) If the property is transferred or conveyed to a bona fide purchaser for value or becomes subject to a lien of a bona fide encumbrancer for value after the transfer of ownership resulting in the imposition of the penalty and before the enrollment of the penalty, the penalty shall be entered on the unsecured roll in the name of the transferee whose failure to file the change in ownership statement resulted in the imposition of the penalty.

(e) When a penalty imposed pursuant to this section is entered on the unsecured roll, the tax collector may immediately file a certificate authorized by Section 2191.3.

(f) Notice of any penalty added to either the secured or unsecured roll pursuant to this section shall be mailed by the assessor to the transferee at his or her address contained in any recorded instrument or document evidencing a transfer of an interest in real property or manufactured home or at any address reasonably known to the assessor.

Section 483 of the Revenue and Taxation Code is amended to read:

483. (a) If the assessee establishes to the satisfaction of the county board of supervisors that the failure to file the change in ownership statement within the time required by subdivision (a) of Section 482 was due to reasonable cause and not due to willful neglect, and has filed the statement with the assessor, the county board of supervisors may order the penalty abated, provided the assessee has filed with the county board of supervisors a written application for abatement of the penalty no later than 60 days after the date on which the assessee was notified of the penalty.

If the penalty is abated it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

(b) The provisions of subdivision (a) shall not apply in any county in which the board of supervisors adopts a resolution to that effect. In that county the penalty provided for in subdivision (a) of Section 482 shall be abated if the assessee files the change of ownership

statement with the assessor no later than 60 days after the date on which the assessee was notified of the penalty.

If the penalty is abated it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

(c) If a person or legal entity establishes to the satisfaction of the county board of supervisors that the failure to file the change in ownership statement within the time required by subdivision (b) of Section 482 was due to reasonable cause and not due to willful neglect, and has filed the statement with the ~~board~~ State Board of Equalization, ~~the board may recommend to the county board of supervisors that~~ may order the penalty be abated, provided the person or legal entity has filed with the county board of supervisors a written application for abatement of the penalty no later than 60 days after the date on which the person or legal entity was notified of the penalty by the assessor.

If the penalty is abated by the county board of supervisors, it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.