

New California Deadlines for Disclosing Certain Proposition 13 Changes in Ownership

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Effective January 1, 2010, California will require any entity undergoing a merger, acquisition or other transaction constituting a Proposition 13 change in ownership under Revenue and Taxation Code (“R&TC”) section 64(c) or 64(d) to file an appropriate change in ownership statement (BOE Form 100-B) within 45 days of the transaction or face a 10% penalty. Cal. SB 816, 2009 Stats. Chap. 622. The new provisions also tighten penalty enforcement, as described below. Currently, no penalties are imposed unless the disclosure statement is not filed within 45 days after California State Board of Equalization (“BOE”) requests the filing.

Existing Statutory Provisions—In Effect through December 31, 2009

R&TC section 64(c) specifies that a Proposition 13 “change in ownership” occurs when a partnership, LLC, corporation, or other entity owner of California real property undergoes a “change in control.” A “change in control” occurs when a direct or indirect owner of the entity increases its equity ownership from a level less than (or equal to) 50 percent to more than 50 percent.

R&TC section 64(d) addresses another Proposition 13 “change in ownership” situation, namely where property had previously been transferred to a legal entity in a transaction that was not a Proposition 13 change of ownership because the property's prior owners (“the original co-owners”) received the same proportional interests in the transferee legal entity. R&TC section 64(d) specifies that a Proposition 13 “change in ownership” will occur if these original co-owners, in one or more transactions, subsequently transfer ownership interests in the legal entity that cumulate to more than 50 percent of their original co-ownership interests.

The affected entity in a section 64(c) or 64(d) “change in ownership” is required to file a ‘Statement of Change in Control and Ownership of Legal Entities’ (Form 100-B) with the BOE, listing all of the parcels

of California real property held by the entity. R&TC §§ 480.1, 480.2. The BOE forwards the completed filing to the affected county assessors, who reassess the property.

Currently Form 100-B must be filed within 45 days after the pertinent transaction, but no penalty is imposed unless the affected entity fails to return the form within 45 days after the BOE mails a request for the form. R&TC §§ 480.1, 480.2, 482(b). BOE requests are typically made as a result of disclosures on the entity's annual California income tax return disclosing the transaction (Questions J and K on FTB Form 100). The penalty for failing to timely file is generally 10 percent of the entity's annual property tax on the reassessed values. R&TC § 482(b). However, under current law there are fairly lenient exceptions under which the penalty may be abated.

New Provisions—Effective January 1, 2010

The new provisions change the existing compliance requirements in three ways.

First, in order to avoid a penalty, the Form 100-B must now be filed within 45 days after **closing** any section 64(c) or 64(d) "change in ownership" transaction, rather than 45 days after the BOE requests the form. This not only accelerates the filing, but also requires taxpayers to independently ascertain what transactions might constitute a "change in ownership."

Second, the 10 percent penalty will be automatically applied if Form 100-B is not filed within 45 days of the transaction. R&TC § 482(b). There no longer is an automatic waiver if the filing is made within 60 days of a late filing notice from the BOE.

Third, any request for a reasonable cause waiver of a late filing penalty must now be applied for and secured from the County Board of Supervisors (rather than the BOE). R&TC § 483(b). Moreover, entities with properties in several counties will separately need to request penalty waivers from each county, rather than making one request to the BOE.

Implications for Future Transactions Involving Entities with California Realty

Evaluating the need for a Form 100-B filing will now be a required compliance item for many corporate and partnership transactions involving entities that own California real property. This would apply to every section 64(c) transaction, which would include many merger and acquisition transactions, and every section 64(d) transaction as described above. Taxpayers may no longer wait for a BOE request for Form 100-B. They must determine on their own when there is or is not a "change in ownership" requiring this filing. When in doubt, clients should protectively file Form BOE 100-B to avoid penalty risk.

A close reading of the statute and its effective dates indicates that any 2009 "change in ownership" should be governed by existing rules and not be penalized as long as Form 100-B is completed within 45 days of a BOE request. The BOE website indicates the same. However, those entities completing 2009 transactions may want to avoid any questions by filing Form 100-B within 45 days after the transaction.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work or the attorneys below.

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