

Mandatory Change in Ownership/Control Reporting

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Summary: Effective January 1, 2010, it is critical that legal entities holding real estate promptly complete and file a Form BOE-100-B, to report a change of ownership/control within 45 days or report within 45 days of a State Board of Equalization request, whether or not a change has occurred.

While most of us in the past may have ignored the requirement that a legal entity holding real estate timely file a Form BOE-100-B to report a change of ownership/control, as of January 1, 2010, non-reporting is not an option. Effective January 1, 2010, the failure to timely report either transfers of interests in a legal entity holding real estate, where the transfer may constitute a change of ownership or control or in response to a State Board of Equalization (BOE) request, even if the transfer is excluded or there is no transfer, may result in penalties.

In particular, effective January 1, 2010, is that a 10% penalty will apply on failure to file a BOE-100-B the earlier of 45 days from (i) an entity transfer causing a change in control/ownership or (ii) written request by the BOE to report on a BOE-100-B (even if there is no transfer).

The BOE-100-B only applies to changes in control/ownership involving a legal entity. A change by the legal entity occurs upon either of either of the following two events:

1. A transfer of ownership interests in an entity if a person or entity acquires more than 50 percent of the ownership in a legal entity -- a change in control (R&T Code Section 64(c)).
2. A transfer of ownership interests in an entity if there is a cumulative transfer of more than 50 percent of the original co-owner's interests in that entity, after using the proportionate transfer rule - a change in ownership. (R&T Code Section 64(d)).

The BOE-100-B is a several page form that must be submitted to the BOE. This form is then shared by the BOE with all counties identified for real property listed on the form.

The BOE-100-B does not apply to legal entities that transfer real property by way of a deed - these continue to be reported by a PCOR (Preliminary Change of Ownership Statement) filed with the deed at the local county recorder's office.

While under prior law, a BOE-100-B filing was required under similar circumstances; the law gave legal entities essentially up to three chances to comply before penalties would be imposed. However, as now adopted, if no report is submitted at the first instance, a change in ownership/control or a request, then the 10% penalty

is assessed, even if no actual change in control/ownership occurs. The penalty will be made by way of an “add on” to the assessed value by the Assessor’s office. Once assessed, the BOE cannot waive the penalty and any request for penalty relief must be made at the County level, i.e., by the local assessor or the Assessment Appeals Board.

In deciding whether to file a BOE-100-B, one difficult question will come up as to whether it has to be filed where there has been no transfer or the transfer will not cause a reassessment. Prominent as on the BOE Web Site is their is warning that non-reassessable changes in ownership may still be subject to penalty if a BOE-100-B is NOT filed within 45 days of the event of transfer of ownership or control in a legal entity.

Given the confusion between what is an “exemption” and an “exclusion” from a change in control/ownership, if certain events are to be disregarded, the safer answer may be to file. The BOE web site for example suggests that the "affiliated group exclusion" is not a change of ownership, but elsewhere says it is an exclusion (and reportable.) Presently it is unclear if the following will be treated as an exemption (not reportable) or an exclusion (reportable):

1. Interspousal and Registered Domestic Partner Exclusions
2. Proportional Transfer Exclusion (A transfer between an individual or individuals and an entity, or between legal entities, that results solely in a change in the method of holding title to the real property, and in which the proportional ownership remains exactly the same before and after).
3. Legal Entity Interests Held by Trust Exclusion (The transfer by the trustor of an ownership interest in a legal entity holding real property into a trust in which the trustor-transferor is the sole present beneficiary, or into an irrevocable trust in which the trustor-transferor retains the reversion and the present beneficial interest of any other person does not exceed 12 years. The transfer of real property or an ownership interest in a legal entity holding real property by the trustor to a trust which is revocable by the trustor.)
4. Affiliated Corporation Group Exclusions

A copy of the BOE-100-B may be obtained at the following web site address of the Board of Equalization: <http://www.boe.ca.gov/proptaxes/pdf/boe100b.pdf>. Because the exclusions are complex, our office frequently advises on the filing and can assist as to any questions.