

LEGAL ENTITY OWNERSHIP PROGRAM

There are two types of transfers involving legal entities that may trigger a change in ownership of real property. The first type is a transfer of real property between an individual and an entity or between entities. The second type is a transfer of an ownership interest in a legal entity that owns real property.

A *legal entity* is any business organization with an existence separate from its owners. Legal entities are permitted to enter into contracts, including contracts for the purchase, sale, or lease of real property. Three of the most common legal entities holding title to real property in California include corporations, partnerships, and limited liability companies. Ownership interest is represented by corporate voting stock, partnership interest, or membership interest. Interests in a legal entity may be owned by an individual, owned by another legal entity, or held in trust. The term "legal entity" or "entity" does not include a trust (unless it is a business trust) or a cooperative housing corporation as these types of entities are not treated as legal entities for property tax change in ownership purposes.

Generally, a transfer of an interest in real property from an individual to a legal entity, from a legal entity to an individual, or between legal entities is a change in ownership under Revenue and Taxation Code¹ section 61(j) and Property Tax Rule 462.180. The most common exclusion available is under section 62(a)(2). This section excludes from change in ownership transfers of real property where the proportional ownership interests in the real property are identical before and after the transfer. Specifically, section 62(a)(2) excludes from change in ownership any transfer of real property between an individual or individuals and a legal 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 interests of the transferors and transferees in each and every piece of real property transferred remain the same after the transfer. This is known as the *proportional ownership interest transfer exclusion*.

When real property is owned by a legal entity, section 64 sets forth the change in ownership provisions related to the purchase or transfer of ownership interests in legal entities. Section 64(a) provides the general rule that transfers of interests in legal entities do not constitute changes in ownership of the real property owned by those legal entities. Thus, purchases or transfers of corporate voting stock, partnership ownership interests, limited liability company membership interests, or ownership interests in other legal entities are not changes in ownership of the real property owned by the legal entity.

However, there are two exceptions to this general rule.

1. The first exception is when a *change in control* of the legal entity occurs—all real property owned by the entity will be reassessed.²

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

² Section 64(c)(1).

2. The second exception is when a legal entity's *original co-owners* cumulatively transfer more than 50 percent of their ownership interests in that legal entity—the real property previously excluded from change in ownership under section 62(a)(2) will be reassessed.³

A *change in control* occurs when a any person or entity obtains control through direct or indirect ownership or control of more than 50 percent of the voting stock of a corporation, or of more than a 50 percent ownership interest in any other type of legal entity. A person or entity obtains *direct control* of an entity when that person or entity acquires:

1. Ownership or control of more than 50 percent of the voting stock of a corporation;
2. More than 50 percent of the total interest in any partnership or LLC capital and profits; or
3. More than 50 percent of the total ownership interest in any other entity.

A person or entity may obtain *indirect control* of an entity by acquiring direct control of another entity that, in turn, directly or indirectly controls such entity.

On or after March 1, 1975, when real property or an interest in an entity is transferred to a legal entity or between entities in a transaction qualifying for the proportional ownership interest transfer exclusion (ownership interests are the same before and after), then those person(s) or entities holding ownership interests in that legal entity immediately after the transaction become *original co-owners*. If an excluded transaction to a legal entity is made by a trust, the present beneficial owners of the trust property are considered the original co-owners.

Section 64(d) provides that when voting stock or other ownership interests representing cumulatively more than 50 percent of the total interests in a legal entity are transferred by any of the original co-owners in one or more transactions, the real property that was previously excluded from change in ownership under section 62(a)(2) will be reassessed. If the transfer by original co-owners also results in a person or entity acquiring control, then all the real property owned by the entity would be reassessed under section 64(c)(1), not just the real property previously excluded under section 62(a)(2). Any real property acquired by the legal entity for which no section 62(a)(2) exclusion was applied would not be affected by any original co-owner transfers as it was reassessed upon the acquisition.

Interest in Real Property

Interest in real property includes any of the following:

- With respect to real property OWNED:
 - Any interest in land⁴
 - Any interest in improvements (e.g., buildings, planted fruit and nut trees and vines).⁵

³ Section 64(d).

⁴ For further information and examples, see [Property Tax Rule 121](#).

⁵ For further information and examples, see [Property Tax Rule 122](#).

- Fixtures (property which was originally personalty, but which is classified as realty because it is physically or constructively annexed to realty; for example, restaurant equipment, built-in furnishings, conveyors, etc.).⁶
- It **does not** include real property owned, but that is being leased to a person or unaffiliated entity where the remaining term of the lease (including renewal options) exceeds 35 years.
- It **does not** include personal property owned (e.g., personal computers, office equipment).
- With respect to real property held under LEASE:
 - Any interest in land, improvements, or fixtures held under lease from a private owner, where the remaining term of the lease (including written renewal options) exceeds 35 years.⁷
 - Any interest in land, improvements, or fixtures held under lease from a public owner (that is, any arm or agency of local, state, or federal government) for any term; or
 - Mineral rights, including working interest in oil, gas and geothermal steam-producing properties owned or held on lease for any term, whether in production or not.
 - It **does not** include real property owned, but that is being leased to a person or unaffiliated entity where the remaining term of the lease (including renewal options) exceeds 35 years.

Affiliated Group

An *affiliated group* means one or more chains of corporations connected through stock ownership with a common parent corporation if **both** of the following conditions are met:

- The voting stock of the corporation making the transfer and the voting stock of the transferee corporation are each owned 100 percent by a corporation related by voting stock ownership to a common parent corporation; *and*
- The common parent corporation directly owns 100 percent of the voting stock of at least one corporation in the chain(s) of related corporations.

By its express language, this exclusion is limited to corporations and, therefore, does not apply to other entities such as limited liability companies or partnerships.

Under section 64(b), the following two types of corporate reorganizations are not a change in ownership:

- Any corporate reorganization, where all of the corporations involved are members of an affiliated group, and that qualifies as a reorganization under section 368 of the Internal Revenue Code and is accepted as a nontaxable event by California statutes is excluded from change in ownership.

⁶ For further information and examples, see [Property Tax Rule 122.5](#).

⁷ For further information, refer to [Property Tax Rule 462.100](#).

- Any transfer of real property among members of an affiliated group is excluded from change in ownership.

For the reorganization exclusion, the transfer must meet all of the requirements of section 64(b), and the taxpayer must furnish supporting documentation upon request.

Reporting Requirements

Reporting a change in control or change in ownership of a legal entity is to be distinguished from reporting a transfer of real property to or from a legal entity or between legal entities. Transfers of real property are reported to the County Assessor via a *Preliminary Change of Ownership Report* or *Change in Ownership Statement* when a document or deed effecting a change in ownership is recorded.

Unlike a transfer of real property, transfers of ownership interests in legal entities do not involve a recorded deed or other notice that would inform County Assessors. Thus, whenever there is a change in control or a change in ownership of a legal entity that owns an interest in California real property, the person or legal entity acquiring control or ownership must file a *Statement of Change in Control and Ownership of Legal Entities* (BOE-100-B) with the State Board of Equalization within 90 days of the date of the change in control or change in ownership to avoid a penalty.

Legal Entity Ownership Program

The Board's Legal Entity Ownership Program (LEOP) gathers and disseminates to County Assessors information regarding changes in control and changes in ownership of legal entities that own or lease an interest in California real property. LEOP analyzes the BOE-100-B and determines whether a transfer results in either a change in control or a change in ownership. Such changes in ownership or changes in control require reassessment of the real property interests. Thus, the purpose of the program is to assist County Assessors in discovering changes in control or changes in ownership that have not been captured by a county's own discovery systems.

Although the law requires entities to voluntarily report, there is a mechanism in place to discover such changes if entities do not file the BOE-100-B on their own accord. Section 64(e) requires the Franchise Tax Board (FTB) to place questions on the tax returns of legal entities asking about changes in control and ownership. The FTB furnishes the responses to the Board. Consequently, the Board may send a request to file the BOE-100-B to an entity as a result of these FTB referrals. These forms must also be completed and filed within 90 days to avoid a penalty.

Upon completion of the analysis, those legal entities that have undergone a change in control or a change in ownership are notified that, based on a BOE-100-B filing review, LEOP staff has determined that the entity experienced a change in control or a change in ownership and any California real property owned or leased by that entity is subject to reassessment.⁸ The notice also advises the entity that the Board will notify the affected County Assessors of such change and that a representative from the Assessor's office may contact the entity in order to request

⁸ BOE-100-N, *Notice of Finding*.

additional information to reassess any taxable real property located within the county's jurisdiction.

Monthly Reports

LEOP staff generates and distributes monthly reports to County Assessors. The monthly reports identify legal entities that have undergone a change in control or a change in ownership. In addition, LEOP staff provides County Assessors with three reports concerning legal entity filings. These monthly reports are called Notice of Finding (NOF) reports. Upon receipt of the NOF reports, County Assessors are responsible for reappraising the real property subject to reassessment as of the date of the change in control or a change in ownership and applying a penalty, if applicable. An electronic copy of the BOE-100-B for each entity that has undergone a change in control or a change in ownership is also provided to Assessors.

One report lists all legal entities determined to have undergone a change in control or change in ownership with real property reported *in a specific county* based on BOE-100-B filings processed by LEOP staff during the preceding month. The report identifies the date of change and number of affected parcels in that county as reported by the entity. In addition, the report identifies the date that the entity filed the BOE-100-B, the BOE's request and due date (if applicable), and whether the entity is subject to penalty as a result of not filing timely.

The parcels listed on the report are self-reported by the entity filing the form; therefore, the Assessor should verify ownership of real property subject to reassessment. In the case of a change in control, the Assessor should conduct a name search in its real property records to ensure that all real property parcels held by the entity and/or any entities under its control as of the date of change are identified. If there is a discrepancy (for example, a parcel was omitted on the BOE-100-B), the entity does not have to amend the filing. However, the Assessor should notify LEOP staff if the discrepancy affects other counties so LEOP staff can inform the counties involved.

It is important to make a distinction between entities that have undergone a change in control versus a change in ownership since it determines which property is subject to reassessment. For an entity that has undergone a change in control, *all* the real property held by the entity and/or any entity under its ownership control as of the change in control date are subject to reassessment. For an entity that has undergone a change in ownership, only the real property previously excluded from change in ownership under section 62(a)(2) is subject to reassessment.

The second report lists *all legal entities* that LEOP staff determined to have undergone a change in control or change in ownership based on BOE-100-B filings that were processed by LEOP staff during the preceding month. The report identifies whether the entity underwent a change in control or change in ownership, the date of change, and counties that were reported by the entity in which it held real property. The date that the entity filed form BOE-100-B, the BOE's request and due date (if applicable), and whether the entity is subject to penalty as a result of not filing timely are also included on this report.

All of the entities listed on this report have been notified⁹ that the BOE has determined that a change in control or ownership has occurred and that California real property is subject to reassessment as of the date of change. Additionally, an Assessor should examine the county's property records for each entity on this report even if the entity did not appear on the Assessor's county-specific report. The entity may have unintentionally omitted a county from its form BOE-100-B filing or identified property in the wrong county.

The third report lists legal entities that have undergone a change in control or change in ownership, but the real property is *not* subject to reassessment due to an applicable exclusion (for example, interspousal, proportional interest transfer, or affiliated group transfer). The applicable Revenue and Taxation Code reference is provided. The report also identifies the date that the entity filed form BOE-100-B, the due date (if applicable), and whether the entity is subject to penalty as a result of not filing timely.

The information on the three reports, in conjunction with the form BOE-100-B filing, will enable the Assessor's office to reappraise the real property subject to reassessment as of the date of the change in control or change in ownership, to note in the Assessor's records that the change in control or change in ownership qualified for exclusion from reassessment, and apply the section 482(b) penalty if applicable.

Section 481 provides that all information furnished in the change in ownership statement shall be held secret by those authorized by law to receive or have access to this information. Therefore, the BOE-100-B filings are confidential and not subject to disclosure under the California Public Records Act, which allows members of the public to inspect most public records. Requests for information on entities that were sent the BOE-100-B and failed to file in response to the Board's request to file are considered confidential. Since the three reports that LEOP staff generates are created from information furnished in the change in ownership statement, these reports are also considered confidential.

Merger Information

Typically, the merging of two entities results in a change in ownership of the real property owned by the disappearing entity pursuant to section 61(j). However, as stated in Assessors' Handbook Section 401, *Change in Ownership*, a change in control can occur, as a result of the merger, if a person or legal entity obtained controlling interests (more than 50 percent) in the disappearing entity prior to the merger or if a person or legal entity obtains controlling interests in the surviving entity. In that case, the real property owned by the entity that underwent a change in control is subject to reassessment unless an exclusion applies. A change in control can also occur if the disappearing entity held controlling interests in another entity that owned California real property.

The NOF includes information on entities filing form BOE-100-B reporting information on a merger. LEOP staff may determine that some of the mergers resulted in a property transfer under section 61(j). However, LEOP staff furnishes the information on ***all*** filings reporting a merger as

⁹ Form BOE-100-N, *Notice of Finding*.

a possibly discovery tool for county assessors to locate transactions that were subject to reassessment.

Penalty

The three LEOP reports listing entities undergoing a change in control or change in ownership identify if an entity is subject to penalty as a result of failure to file form BOE-100-B timely in accordance with sections 480.1 or 480.2. Assessors must impose a penalty if real property is held within their jurisdiction. Pursuant to section 482(c), the penalty for failure to file timely for any one transfer may be imposed only one time. An Assessor must notify the entity of the penalty as directed by sections 482(b) and 483(c).

Under section 482(b), a 10 percent penalty applies if a person or legal entity fails to timely file a BOE-100-B as required by sections 480.1 and 480.2. If a change in control or change in ownership has occurred, the penalty is 10 percent of the taxes applicable to the new base year value of the real property (for example, land, improvements, and fixtures) reassessed. If a change in control or change in ownership *has not* occurred, the penalty is 10 percent of the current year's taxes on the real property as of the date the filing period expired.

A penalty may be abated by the county board of supervisors sitting as a county board of equalization or the assessment appeals board if the failure to file a BOE-100-B timely was due to reasonable cause and circumstances beyond the assessee's control, and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect.

A written application for abatement of the penalty¹⁰ must be filed no later than 60 days after the date on which the assessee was notified of the penalty by the Assessor. Once an application is filed, a county board of equalization or assessment appeals board may abate the penalty if both of the following have been met:

- The BOE-100-B has been filed with the Board; and
- The assessee establishes to the appeals board's satisfaction that the failure to file was due to reasonable cause and circumstances beyond the assessee's control, and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect.

If a written request to file a BOE-100-B is mailed by the Board, and the Assessor determines that the written request was based on erroneous information provided to the Board by any person or entity (including the Franchise Tax Board), an Assessor, or Board staff, the Assessor must abate the penalty if the person or legal entity required to comply with the written request notifies both the Board and the Assessor of the error no later than 60 days after the date on which the person or legal entity is notified of the penalty.

¹⁰ Form BOE-305-AH, *Assessment Appeal Application* (formerly known as the *Application for Changed Assessment*).