



STATE BOARD OF EQUALIZATION
 PROPERTY AND SPECIAL TAXES DEPARTMENT
 450 N STREET, SACRAMENTO, CALIFORNIA
 PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
 916 445-4982 • FAX 916 323-8765
 www.boe.ca.gov

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 First District, San Francisco

MICHELLE STEEL
 Third District, Rolling Hills Estates

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 Executive Director

No. 2010/045

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TO COUNTY ASSESSORS:

CHANGES IN CONTROL AND OWNERSHIP OF LEGAL ENTITIES
PENALTY CHARTS

The enactment of Senate Bill 816, effective January 1, 2010, amended, in part, Revenue and Taxation Code sections 480.1, 480.2, 482 (b) and 483 (c) pertaining to legal entities. Letter To Assessors 2010/028 was issued on May 19, 2010, and provided a detailed description of the changes to: (1) the filing requirements, (2) application of penalty, (3) notification of penalty; and (4) abatement of the penalty.¹

State Board of Equalization (Board) staff has prepared the following two penalty charts that provide guidance for the application of penalty when an entity files a form BOE-100-B, *Statement of Change in Control and Ownership of Legal Entities*, with the Board. It discusses factors that determine when a BOE-100-B is not filed timely, if and when an entity is subject to penalty under section 482(b), and information on notice of penalty and penalty abatement.² The first chart addresses application of penalty based on: (1) the date that a change in control (CIC) or change in ownership (CIO) occurred; (2) if applicable, the date the Board requested an entity to file; and (3) the date the entity filed form BOE-100-B. The second chart addresses application of penalty in cases when the legal entity has *not* undergone a CIC or CIO.

In general, the penalty abatement provisions as they apply to form BOE-100-B filings where the Board made written request to file is as follows:

- If an entity received a request to file form BOE-100-B before January 1, 2010, the entity would fall under the automatic abatement or extinguishment provisions if the entity filed within 60 days of the Board's second request and penalty notice, even if the filing was submitted after January 1, 2010. If the entity did not file within 60 days of the penalty notice, then its recourse is to submit a request for abatement at the county level.
- If an entity received a request to file form BOE-100-B on or after January 1, 2010, and failed to file within 45 days of the Board's written request, the entity would fall under the abatement provisions established by SB 816.

It is important to note that if the CIC/CIO occurred *on or after* January 1, 2010, and the entity failed to file form BOE-100-B within 45 days of the event (i.e., self-report the event to the Board) the entity

¹ As a reminder, Letter To Assessors 84/30, *LEOP Penalty Procedures (March 13, 1984)*, was superseded by Letter To Assessors 2010/028.

² Note: R&TC 482(f) requires notice of any penalty added to the secured or unsecured roll pursuant to R&TC 482 to 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.

would fall under the abatement provisions established by SB 816. In addition, if an entity reports a CIC or CIO that occurred *before* January 1, 2010, it is not subject to penalty, unless the Board previously requested the entity to file form BOE-100-B.

For administrative reasons, for any form BOE-100-B requests sent by the Board after January 1, 2010, as well as filings that were received by the Board prior to January 1, 2010, which were processed and sent to county assessors after January 1, 2010, the county assessor should notify entities that are subject to penalty in accordance with the statutory provisions in effect January 1, 2010.³ Accordingly, entities would be able to file a request for abatement at the county level as long as the entity submits written application for abatement within 60 days of the county assessor's penalty notice as required by section 483(c)⁴. As discussed in Letter To Assessors 2010/028, application is made to the county board of supervisors unless the county board of supervisors has established an assessment appeals board to hear equalization matters.

If you have any questions regarding any of the penalty provisions, please contact the Legal Entity Ownership Program at 916-323-5685.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

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³ Similarly, if a county assessor is applying a penalty to an entity after January 1, 2010, the assessor should notify the entity in accordance with the statutory provisions in effect January 1, 2010 regardless of whether or not the entity was previously notified by the Board of the penalty.

⁴ The provisions of section 483(c) also require that form BOE-100-B be filed with the Board before the penalty can be abated.

Penalty Chart for Legal Entities Filing form BOE-100-B Reporting a CIC/CIO

CIC/CIO Date and Filing Date	If & When Penalty Attaches	Who Sends the Notice of Penalty	How the Penalty Can Be Abated
<p>CIC/CIO occurred <i>before</i> 1/1/2010</p> <p><i>and</i></p> <p>entity filed <i>prior to</i> 1/1/2010⁵</p>	<p>Penalty attached if an entity failed to file form BOE-100-B within 45 days of the State Board of Equalization's request.</p> <p>The penalty attaches at the expiration of the 45 day period.</p>	<p>If the entity did not file in response to the State Board of Equalization's first request to file, the entity was sent a second request to file form BOE-100-B. The second request was accompanied by a penalty notice (form BOE-100-C). The due date for the second request was 60 days from the second request date.</p> <p>The notice advised that the penalty would automatically be extinguished if form BOE-100-B was filed within 60 days of the notice.</p>	<p>Penalty was automatically extinguished by the State Board of Equalization if the entity filed form BOE-100-B within 60 days of the penalty notice (form BOE-100-C).</p> <p>See R&TC 482(b) (in effect prior to 1/1/2010)</p> <p>If the entity did not file form BOE-100-B within 60 days of the State Board of Equalization's penalty notice, there is no longer any automatic extinguishment remedy available. The entity may seek further abatement at the county level.</p>
<p>CIC/CIO occurred <i>before</i> 1/1/2010</p> <p><i>and</i></p> <p>entity filed <i>after</i> 1/1/2010</p>	<p>Whether the State Board of Equalization requested the entity to file <i>before or after</i> 1/1/2010, penalty attaches if the entity failed to file form BOE-100-B within 45 days of the request.</p> <p>The penalty attaches at the expiration of the 45 day period.</p>	<p>A) If the State Board of Equalization's request was sent <i>before</i> 1/1/2010, the following applies: if the entity did not file in response to the first request, the State Board of Equalization sent the entity a second form BOE-100-B. The second request was accompanied by a penalty notice (form BOE-100-C) advising the entity if form BOE-100-B was filed within 60 days that the penalty would be automatically abated. The due date for the second request was 60 days from the request date.</p> <p>B) If the State Board of Equalization's request was sent <i>after</i> 1/1/2010, the following applies: if the entity did not file within 45 days of the request, County Assessors must notify the entity of penalty and that it has 60 days to submit a written application for abatement of penalty under R&TC 483(c).</p>	<p>A) Since the State Board of Equalization requested the entity to file <i>before</i> 1/1/2010, the penalty was automatically extinguished if the entity filed form BOE-100-B within 60 days of the penalty notice (form BOE-100-C).</p> <p>See R&TC 482(b) (in effect prior to 1/1/2010)</p> <p>However, if the entity did not file within 60 days of the State Board of Equalization's penalty notice, the entity may seek further abatement at the county level.</p> <p>B) Since the State Board of Equalization's request was sent <i>after</i> 1/1/2010, there is no statutory provision allowing for automatic extinguishment. Entity must submit application for abatement of penalty at the county level.</p> <p>See R&TC 482(b) and 483(c) (in effect 1/1/2010)</p>

⁵The filing date is the postmark date.

**Penalty Chart for Legal Entities Filing form BOE-100-B
Reporting a CIC/CIO - Continued**

CIC/CIO Date and Filing Date	If & When Penalty Attaches	Who Sends the Notice of Penalty	How the Penalty Can Be Abated
CIC/CIO occurred <i>on or after</i> 1/1/2010	Penalty attaches if an entity does not file form BOE-100-B with the State Board of Equalization within 45 days from the earlier of: (1) the date of the CIC/CIO or (2) the State Board of Equalization's written request to file.	R&TC 483(c) (<i>in effect 1/1/2010</i>) provides that notification of penalty be made by the Assessor. The Assessor's notice informs the entity that it may file written application for abatement of penalty within 60 days after being notified of the penalty by the Assessor. Generally, as of 1/1/2010, assessors are combining the R&TC 482(f) penalty notice with R&TC 483(c) penalty notice.	The penalty may be abated at the county level. Written application must be made within 60 days of notification of penalty by the Assessor; and penalty abatement cannot be granted unless the entity has filed form BOE-100-B with the State Board of Equalization. <i>See R&TC 483(c) (in effect 1/1/2010)</i>

**Penalty Chart for Legal Entities Filing form BOE-100-B
Reporting a CIC or CIO Did Not Occur**

Date of Request and Filing Date	If & When Penalty Attaches	Who Sends the Notice of Penalty	How the Penalty Can Be Abated
Board sent request <i>prior to</i> 1/1/2010 <i>and</i> entity filed <i>prior to</i> 1/1/2010	Penalty attaches if an entity failed to file form BOE-100-B within 45 days of the State Board of Equalization's request. The penalty attaches at the expiration of the 45 day period.	If the entity did not file in response to the State Board of Equalization's first request to file, the entity was sent a second request to file form BOE-100-B. The second request was accompanied by a penalty notice (form BOE-100-C.) The due date for the second request was 60 days from the request date. The notice advised that the penalty would automatically be extinguished if form BOE-100-B was filed within 60 days of the notice.	Penalty was automatically extinguished by the State Board of Equalization if the entity filed form BOE-100-B within 60 days of the penalty notice (form BOE-100-C). See R&TC 482(b) (in effect prior to 1/1/2010) If the entity did not file form BOE-100-B within 60 days of the State Board of Equalization's penalty notice, there is no longer any automatic extinguishment remedy available. The entity may seek further abatement at the county level.
Board sent request <i>prior to</i> 1/1/2010 <i>and</i> entity filed <i>after</i> 1/1/2010	Penalty attaches if an entity failed to file form BOE-100-B within 45 days of the Board of Equalization 's request (the Q1 due date.) The penalty attaches at the expiration of the 45 day period.	If the entity did not file in response to the State Board of Equalization's first request to file, the entity was sent a second request to file form BOE-100-B. The second request was accompanied by a penalty notice (form BOE-100-C.) The due date for the second request was 60 days from the request date. As described in this LTA, for administrative reasons, assessors should also notify the entity of the penalty and application for abatement in accordance with R&TC 483(c) effective 1/1/2010.	Penalty is automatically extinguished by the State Board of Equalization if the entity filed form BOE-100-B within 60 days of the penalty notice (form BOE-100-C). See R&TC 482(b) (in effect prior to 1/1/2010) If the entity did not file form BOE-100-B within 60 days of the State Board of Equalization's penalty notice, there is no automatic extinguishment available. The entity may seek abatement at the county level.
Board sent request <i>after</i> 1/1/2010	Penalty attaches if an entity failed to file form BOE-100-B within 45 days of the Board of Equalization's request (the Q1 due date.) The penalty attaches at the expiration of the 45 day period.	R&TC 483(c) (<i>in effect 1/1/2010</i>) provides that notification of penalty be made by the Assessor. The Assessor's notice informs the entity that it may file written application for abatement of penalty within 60 days after being notified of the penalty by the Assessor. Generally, as of 1/1/2010, assessors are combining the R&TC 482(f) penalty notice with the R&TC 483(c) penalty notice.	Since the State Board of Equalization's request to file was sent <i>after</i> 1/1/2010, there is no statutory provision allowing for automatic extinguishment of the penalty. The entity must submit application for abatement of penalty at the county level within 60 days of notification of penalty by the Assessor. (Before abatement can be granted, form BOE-100-B must be filed with the State Board of Equalization.) See R&TC 482(b) and 483(c) (in effect 1/1/2010)