

2012 Changes to Property Tax Reporting Requirements for Real Property

BY DIBBY ALLAN GREEN

Last month's article, "2012 Changes to Property Tax Reporting Requirements for Legal Entities," examined transfer of ownership interests in legal entities in light of the modifications to the reporting and penalty scheme made by SB 507, now chaptered and effective January 1, 2012. This article will summarize the reporting requirements and penalties, as they relate to transfers of interests in real property, as modified by SB 507.

Reporting Requirements

The reporting requirements apply to transfers of interests in real property which constitutes a change in ownership (CIO) of the property (Revenue and Taxation Code §480; all section references herein refer to this Code).

A CIO generally means when the prior owner no longer continues to own the property (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298), and specifically means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest (§60).

When individuals, trusts, estates, and legal entities transfer real estate, whether or not any deed or other instrument is recorded (e.g., upon change of a beneficiary under a trust), the transferee has the duty to report a change in ownership to the Assessor within ninety days for transfers after January 1, 2012, or forty-five days for transfers prior thereto, and also to respond to a request of the Assessor for a Change in Ownership Statement within the same time period, running from the postmark date of mailing of the request (§§480(c), 482(a), both as amended by SB 507). However, for a transfer occurring upon a death, the trustee (if property is held in trust) or the transferee must report within 150 days of death; or if there is a probate, the personal representative must report prior to filing the inventory and appraisal (§§480(b), (c) and (e)), although a response to a request from the Assessor is still ninety or forty-five days, as set forth above (§480(c) as modified by SB 507).

For recorded instruments, the reporting requirement is satisfied by a completed Preliminary Change in Ownership

Report (PCOR) accompanying the instrument at the time of recording (§480.3). The PCOR should be completed with care – it is the document where sufficient facts of the transfer are to be disclosed to the Assessor in order to satisfy the reporting requirements. As such, it is also the place to set forth reasons why the transfer is not a CIO, if it is not.

If not reported on a PCOR accompanying a recorded instrument, the deadline for filing a Change in Ownership Statement (or supplemental information requested by the Assessor) is met by the postmark date or the date certified by a bona fide private courier service on the envelope containing the statement (§480(g)). (Note that for state assessed properties, such as utilities, the request will come from the Board of Equalization [BOE] and be filed with BOE, instead of the Assessor.)

The statutory reporting requirements do not require any statement of legal analysis as to whether a transfer is or is not a CIO; they only require reporting of sufficient facts of the transfer for the Assessor to make such determination. In other words, *timely reporting (including protectively) of sufficient facts of the transfer will alleviate the risk of reporting penalties, whether or not a CIO actually has occurred.*

Where facts are insufficiently known by the reporting deadline (e.g., a trust settlor's death where the sub-trust funding cannot be determined until the estate tax return is completed), the reporting requirement can be met by timely reporting all facts then known and later supplementing the statement once the remaining facts are determined.

Possible Penalties

Unlike transfer of interest in legal entities, there are *no* automatic, mandatory penalties for failure to timely file a PCOR or Change in Ownership Statement.

However, when the Assessor requests a Change in Ownership Statement be filed, failure to respond timely can mean a penalty which is the greater of (a) \$100, or (b) 10% of the taxes applicable to the new base year value, but not to exceed \$20,000 for transfers occurring on January 1, 2012, and following, on property not eligible for the homeowners' exemption (that is, everything except a person's primary residence), or \$5,000 for properties eligible for the homeowners' exemption, *if such failures to file are not willful*; however, both of these penalty caps are limited to \$2,500 for transferring occurring prior to January 1, 2012. (§§480(c), 482(a), both as modified by SB 507).

What if there is actually no CIO? Failure to respond to an Assessor's request will result in the \$100 penalty amount.

What if the transfer is reported, but the Assessor makes a second request for more information? Failure to timely respond can still result in the penalty; however, the penalty

is applied only once per transfer, no matter the number of Assessor's requests (§482(c)).

What if the Assessor deems that the failure to respond to a request was willful? The penalty will be the greater of \$100 or 10% of the new base year value *without any cap*.

SB 507 served to increase the penalty amount on properties with a new base year value (that is, the reassessed value due to a CIO) in excess of \$2.5 million. At the basic 1% tax rate, the prior \$2,500 cap represented 1% tax on \$2.5 million value times 10% penalty. The legislation was sponsored by the California Assessor's Association for the stated purpose of fostering greater taxpayer reporting compliance. Both the Legislature and BOE do not see the penalty increase as revenue neutral and believe what increase may be collected will be offset by greater compliance reducing the number of penalties asserted, particularly due to the extended ninety-day time frame.

Taxpayers may request abatement of any reporting penalty within sixty days of notification of the penalty by filing the statement and making application to the Assessment Appeals Board with proof that the failure to file was due to reasonable cause and not willful neglect (§§483(a) and (c)(1), as amended by SB 507 and SB 947).

As mentioned last month, there are several other possible consequences for not reporting a transfer which is a CIO, all beyond the scope of this article, but set forth in detail in Green, "Property Tax Reporting Requirements and the Consequences of Not Complying," *California Trusts and Estates Quarterly*, Vol. 15, Iss. 3, Fall, 2009, pp. 42-56, available online at www.taxlawsb.com/resources/PptyTax/PropertyTaxReportingRequirements.pdf.

How to Protect Clients from Reporting Penalties


1. Prior to every transfer of interest in real property—that is, every sale or exchange, every lifetime gift or anticipated death, every change in a trust beneficiary, any creation of a lease with a term (including options) of thirty-five years or more, or the termination of such a lease, or the assignment of a leasehold estate where the remaining term is thirty-five years or more (including options), and any other form of transfer of interests in real property—examine the transfer to determine the possible risk of a CIO, and timely report the facts of the transfer if there is any possible risk. Use a PCOR to accompany recorded instruments, but if nothing is recorded, use a Change in Ownership Statement (form on the Assessor's website).
2. Take every written request for a Change in Owner-

ship Statement or supplemental information from the Assessor seriously and make sure the statement or other response is filed by its due date.

3. Parties to a lease, or tenant in common owners, may want to specify in writing who bears the burden of payment of any increased tax due to a reassessment.
4. Except for probates and trusts, the transferee (e.g., buyer) of a real property transfer has the responsibility to report the transfer, will bear the cost of any reporting penalties which may be levied, and will bear the cost of the increased tax, if a reassessment is triggered. If some other arrangement is desired, the parties to the transaction should specify the arrangement in writing. ■

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