



New Ten Percent Penalty Imposed in California for Failure to Timely Report Changes in Control

Effective January 1, 2010, if a legal entity fails to file a change in control statement within 45 days of the earlier of: 1) the date of the change in control or the change in ownership of the corporation, partnership, limited liability company, or other legal entity; or, 2) the date of a written request by the State Board of Equalization (“BOE”), then a penalty of 10 percent of the taxes applicable to the new base year value of the subject real property (or 10 percent of the current year’s taxes on that property if no change in control or change in ownership occurred) will be added to the subject property’s assessment.

Currently, a 10 percent penalty is imposed only if the legal entity required to file a change in control statement fails to do so within 45 days from the date of a written request by the BOE. The penalty is automatically extinguished if the change in control statement is filed no later than 60 days after the date on which the legal entity is notified of the penalty.

Under the revised law, however, the penalty becomes applicable much earlier, and even without a written request from the BOE. The new law also provides that the penalty is not automatically extinguished, but instead authorizes the county board of supervisors to order that the penalty be abated if the legal entity establishes that the failure to file a timely change in control statement was due to reasonable cause, and the entity has since filed the required statement with the BOE.

Consequently, entities owning real property in California that have experienced changes in control, or transactions that may constitute a change in ownership for purposes of reassessment, are encouraged to review their past transactions to evaluate their potential reporting requirement before the new law takes effect on January 1, 2010.

Winston & Strawn LLP’s State and Local Tax Group regularly assists property owners in their analyses of mergers, reorganizations, and other transactions that commonly raise complex issues about whether a change in control has occurred. Please contact a member of our group if you have any questions about the new law, or would like assistance analyzing a potentially reportable transaction.

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