STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**05/11/11**	Bill No:	**Senate Bill 507**
Tax Program:	**Property**	Author:	**DeSaulnier**
Sponsor:	**California Assessors' Association**	Code Sections:	**RTC 480, 480.1 480.2, 482, & 483**
Related Bills:	**SB 947 (SG&F)**	Effective Date:	**01/01/12**

BILL SUMMARY

This bill relates to property tax change in ownership reporting requirements and related penalties for (1) real property transfers that must be reported to the local county assessor and (2) legal entity ownership interest transfers that must be reported to the Board of Equalization (BOE). Specifically, this bill:

Real Property Transfers. Related to an assessor's written request to a property owner to file a change in ownership statement[1]:

- Increases the penalty for failure to file the statement on property with a value of $2.5 million or more as follows:
  - Increases from $2,500 to $20,000 the maximum penalty on property not eligible for the homeowners' exemption. *§480, §482(a)*
  - Increases from $2,500 to $5,000 the maximum penalty on property eligible for the homeowners' exemption. *§480, §482(a)*
- Increases from 45 to 90 the number of days to file the statement. *§480, §482(a)*
- Specifies the statement identify the real property or manufactured home for which the request is being made. *§482(f)*
- Specifies the address to use when mailing the request. *§480(c), §482(a)(2), §482(f)*
- Specifies the address to use when mailing a penalty notice for failure to file. *§482(f)*
- Requires penalty notices to identify the parcel or parcels for which the penalty is assessed. *§482(f)*
- Specifies that the date of the mailing, not the date of the written request, begins the 90 day period within which to file the statement. *§482(a)*
- Specifies that the postmark date will serve as the date the property owner files the statement. *§480(g)(2)*

Legal Entity Ownership Interest Transfers. Related to legal entity change in control and change in ownership statements required to be filed with the BOE[2]:

- Increases from 45 to 90 the number of days a legal entity has to report a change in ownership or change in control to the BOE. *§480.1, §480.2, §482(b)*

[1] This document will be referred to as a COS throughout this analysis.
[2] This document, which is different from a COS, will be referred to as a LEOP COS throughout this analysis.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

- Increases from 45 to 90 the number of days a legal entity has to file a statement with the BOE before a penalty will be levied for failure to file a statement after a BOE written request. *§480.1, §480.2, §482(b)*
- Clarifies that the penalty for failure to file the statement with the BOE is to be levied by the assessor. *§482(b)(1)*

Penalty Abatement. Related only to legal entity change in control and change in ownership statements required to be filed with the BOE:

- Allows for penalty abatement when a written request to file a statement by the BOE was based on erroneous information, as specified. *§482(b)(2)*
- Expressly provides that in those counties with assessment appeals boards, the appeals board will hear penalty abatement appeals for late filed or failure to file penalty related issues. *§483(c)(2)*

Summary of Amendments

Since the previous analysis, related to the COS, the amendments (1) delete prior amendments requiring additional information in the "Important Notice," (2) require requests to specify the parcel(s) to which it pertains, and (3) require any resulting penalty notice to identify the parcel to which it pertains. Related to the LEOP COS, the amendments (1) specify the assessor is to determine when erroneous information was used in requesting a LEOP COS to be filed and (2) specify that the assessor is to abate the penalty.

ANALYSIS

PART 1
CHANGE IN OWNERSHIP – REAL PROPERTY TRANSFERS
Revenue and Taxation Code Section 480

CURRENT LAW

Change in Ownership. Under existing property tax law, real property is reassessed to its current fair market value when there is a "change in ownership." (Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60-69.5) There are numerous laws in place intended to assist county assessors with obtaining information necessary to perform this function. Revenue and Taxation Code Section 255.7 requires that whenever a change in ownership is recorded, the county recorder must provide the assessor with a copy of the transfer ownership document as soon as possible and Article 2.5 (Revenue and Taxation Code Sections 480-487) "Change in Ownership Reporting" requires taxpayers to provide information to the assessor.

Change in Ownership Statement. Revenue and Taxation Code Section 480 requires that, whenever there is a change in ownership of real property, the buyer (the "transferee") must file a "Change in Ownership Statement" (COS). However, there is no penalty for failing to file the statement unless the assessor prompts the property owner to file the statement by making a written request. If requested, then the property owner has 45 days to file the COS or otherwise incur penalties as specified.

The majority of property owners are not requested to file a COS because a "Preliminary Change in Ownership Report" (PCOR)[3] is filed concurrently with ownership transfer documents with the county recorder to avoid an additional recording fee of $20. These two forms mirror each other and the information requested is identical. The COS and/or PCOR provide the assessor with information necessary to value the property, such as details about the purchase price and the terms of the sale. It also assists the assessor in determining whether the transfer of property might be eligible for one of the many change in ownership exclusions that would avoid the need to reassess the property. Both the COS and the PCOR are confidential documents pursuant to Section 481.

Typically, when a property owner files a PCOR, the assessor would have no need to make a written request for a COS since the information needed from the property owner has already been obtained from the PCOR. However, Section 480.3(d) provides that "[t]he authority to obtain information under this provision is in addition to, and not in lieu of, any existing authority the assessor has under Article 2.5 "Change in Ownership Reporting."

Penalty Only After Written Request. Generally, the penalty for failing to timely file a COS after a written request is 10 percent of the taxes applicable to the new base year value reflecting the change in ownership, but not to exceed $2,500 provided the failure to file the statement is not willful. Thus, at the basic 1 percent tax rate, the maximum penalty threshold of $2,500 applies to any property with a new base year value in excess of $2.5 million (1 percent x $2.5 million = $25,000 x 10 percent penalty = $2,500). If the failure to file the statement is deemed "willful" then no penalty cap applies and the penalty is 10% of the property's new base year value. In the event that a written request is made, but in fact no change in ownership occurred, the penalty for failure to respond to the assessor is $100.

Penalty Abatement. Section 483(a) provides that the board of supervisors may abate the penalty if the assessee (1) establishes to the satisfaction of the board of supervisors that the failure to file the change in ownership statement within the time required by Section 482(a) was due to reasonable cause and not due to willful neglect, and (2) has filed the statement with the assessor, provided the assessee has filed with the board of supervisors a written application for abatement of the penalty no later than 60 days after the date on which the assessee was notified of the penalty.

County Optional - Automatic Penalty Abatement. Alternatively, in those counties where the board of supervisors adopts a special resolution, Section 483(b) provides that the penalty shall be abated if the assessee files the change in ownership statement with the assessor no later than 60 days after the date the assessee is notified of the penalty.

Addresses. Currently the law is silent as to the address a change in ownership statement is to be mailed. With respect to any penalty levied because of failure to respond to a written request, Section 482(f) provides that the penalty notice is to be mailed to the transferee at his or her address as indicated in any recorded instrument or at any address reasonably known to the assessor.

[3] Section 480.3 requires the transferee of real property to complete and file a PCOR when any document effecting a change in ownership, such as a grant deed, is submitted to the county recorder for recordation. If a PCOR is not concurrently filed, the document may still be recorded, but an additional recording fee of $20 may be charged. To avoid the fee, many property taxpayers, particular homeowners, will file a PCOR at the time a deed is recorded.

PROPOSED LAW

Change in Ownership Statement. This bill would amend Section 480 to increase the maximum penalty cap from $2,500 to $20,000 for those that fail to file a COS with the assessor after a written request is made under Section 480, except for properties eligible for the homeowners' exemption. The maximum penalty cap for properties eligible for the homeowners' exemption would be increased from $2,500 to $5,000. In practical application, this would increase the penalty for failure to file a COS on any property with a new base year value in excess of $2.5 million. In addition, this bill would increase the number of days to respond after a written request from 45 to 90 days and would specify that, where applicable, the postmark date will be used to determine whether the statement was timely filed.

Addresses – Request to File COS and Mail any Resulting Penalty Notice. This bill would add paragraph (2) to Section 482(a) and amend subdivision (f) of Section 482 to specify the address to which a request to file a COS must be sent as noted below. It would also amend Section 482(f) so the provision that the penalty notice for failure to file a change in ownership statement with the assessor may be mailed to *any* address reasonably known to the assessor would be available only as a last resort and by providing that the notice is to be mailed as follows:

- To the transferee at the address contained in any recorded instrument or a document evidencing a transfer of an interest in real property or manufactured home, or the address specified for mailing tax information on the filed preliminary change in ownership report.
- If the transferee has subsequently notified the assessor of a different address for mailing tax information, the assessor shall mail the request to this address.
- If there is no address specified for mailing tax information on either the recorded instrument or document evidencing a transfer of an interest in real property or manufactured home or the filed preliminary change in ownership report, and the transferee has not provided a subsequent address for mailing tax information, *then* the assessor shall mail the notice of penalty or the request to file a statement to the transferee at any address reasonably known to the assessor.

This bill would also amend Section 482(f) to require both the request to file a COS and any resulting penalty notice to identify the parcel or parcels to which it pertains.

PART 2
CHANGE IN OWNERSHIP – TRANSFERS OF OWNERSHIP INTERESTS IN LEGAL ENTITIES
Revenue and Taxation Code Section 64

CURRENT LAW

Revenue and Taxation Code Section 64 sets forth the change in ownership provisions related to the purchase or transfer of ownership interests in legal entities that own real property (e.g., stock in a corporation, interests in a limited liability company, or interests in a partnership). Section 64(a) provides the general rule that transfers of interests in legal entities do not constitute changes in ownership (and, therefore, no reassessments) of the real property owned by those legal entities. However, there are two exceptions to that general rule. The first exception is when there is a "change in control" of the legal entity. The second exception is when persons that are deemed "original coowners" of

the legal entity cumulatively transfer more than 50 percent of their ownership interests in that legal entity. Specifically:

- **Change in Control of Legal Entity.** Section 64(c) provides that when 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 obtains more than a 50 percent ownership interest in any other type of legal entity, a reassessment of will occur of all real property owned by the acquired legal entity (and any entity under its control) as of the date of the change in control.
- **Cumulative Transfers by "Original Coowners**." 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 coowners"[4] in one or more transactions, the real property which was previously excluded from change in ownership under Section 62(a)(2), shall be reassessed.

LEGAL ENTITY CHANGE IN OWNERSHIP DISCOVERY
Revenue and Taxation Code Section 480.1 and 480.2

LEOP. Assessors discover most changes in ownership of real property via grant deeds or other documents recorded with the county recorder. However, real property owned by a legal entity may undergo a "change in ownership" as discussed above, but no grant deed or other document will be recorded that could alert the assessor that the property should be reassessed. Discovery of these types of changes in ownership, unlike transfers of real property, require the BOEs direct participation and self reporting by the legal entities.

The BOE participates in this discovery task through a program called the Legal Entity Ownership Program (LEOP). In the case of a Section 64 (c) change in control, a person or legal entity that acquires control of a legal entity that owns real property is required to report that event to the BOE. In the case of a Section 64(d) change in ownership, the legal entity itself is required to report to the event to the BOE. The document used to report the change in control or ownership of a legal entity is substantively different than the one used for real property transfers reported to the assessor, although both are referred to as "change in ownership statements". To differentiate between the two statements, the statement filed with the BOE will be referred to as the LEOP COS while a statement filed with the assessor will be referred to as a COS. To illustrate the distinction:

[4] **Proportional Ownership Interests Exclusion Creates "Original Coowner" Designation.** Under Section 62(a)(2), a transfer of real property to a legal entity does not result in a reassessment if the transfer is merely a change in the method of holding title and the proportional ownership interests in the real property are *exactly* the same before and after the transfer. However, after a transfer of real property qualifies for this exclusion from reassessment, the persons holding ownership interests in the legal entity immediately after the transfer are considered "**original coowners**" for purposes of tracking subsequent transfers by original coowners of those interests. When such transfers cumulatively exceed 50 percent, the real property previously excluded from reassessment under Section 62(a)(2), is deemed to undergo a change in ownership, and is, therefore, subject to reassessment under Section 64(d).

- **COS filed with Assessor.** If a legal entity purchases an office building, the legal entity would file a COS directly with the county assessor where the property is located.
- **LEOP COS filed with BOE.** If that same legal entity instead purchases the business that owns that office building (buys a majority ownership interest in the company), the legal entity would file a LEOP COS with the BOE. The BOE would in turn alert the affected local county assessor of the need to reassess that property.

Self Reporting Requirement

45 Days. Existing law requires a LEOP COS to be filed with the BOE within 45 days of the date of the event that triggers a change in control or change in ownership of a legal entity under Section 64(c) or (d). In the case of a change in control under Section 64(c), the person or legal entity that *acquired* control of the legal entity is responsible for filing the LEOP COS.

Penalty. If a person or legal entity does not file the required LEOP COS within 45 days, a penalty is applicable. The penalty amount is 10 percent of the taxes applicable to the new base year value reflecting the change in control or change in ownership of the real property owned by the legal entity.

Unreported Discovery Efforts

To help discover unreported changes in control and changes in ownership of legal entities, the law requires that the BOE participate in the discovery of changes in control and ownership of legal entities under Section 64(c) and (d). To this end, the primary method is an annual canvassing of legal entities via the income tax return as required by Section 64(e). The questions on the California income tax form of corporations are as follows:

> **J 1.** For this taxable year, was there a change in control or majority ownership for this corporation or any of its subsidiaries that owned or (under certain circumstances) leased real property in California? . . . . . ☐ Yes ☐ No
>
> **2.** For this taxable year, did this corporation or any of its subsidiaries acquire control or majority ownership of any other legal entity that owned or (under certain circumstances) leased real property in California? . . . . . ☐ Yes ☐ No
>
> **3.** If this corporation or any of its subsidiaries owned or (under certain circumstances) leased real property in California, has more than 50% of the voting stock of any one of them cumulatively transferred in one or more transactions since March 1, 1975, which was not reported on a previous year's tax return? . . . . . ☐ Yes ☐ No
>
> **(Penalties may apply – see instructions.)**

The Franchise Tax Board (FTB) transmits to the BOE for further investigation the names and mailing addresses of the legal entities that report a change in control and/or a change in ownership on the income tax return. The BOE then makes a formal written request to the legal entity to file a LEOP COS to determine if property it owns in California should be reassessed.

The BOE also makes formal written requests to legal entities to investigate other possible changes in ownership based on information it obtains from monitoring business publications and referrals it received from local assessors or other sources.

Additionally, at the local level, businesses are canvassed via the annual business property statement filed with the local assessor.

Written Requests. If a legal entity does not complete and file the requested LEOP COS within 45 days, a penalty is applicable. The penalty for failure to respond to a BOE written request to file a LEOP COS or failure to timely respond applies whether or not a change in control or change in ownership actually occurred. (If it is later determined that a change in control or change in ownership did occur, and was not previously self-reported to the BOE, then a penalty would have been triggered previously --because it was not reported within 45 days of the event.)

PROPOSED LAW

Related to the LEOP COS required to be filed with the BOE, this bill:

Self Reporting Requirement. Amends Sections 480.1, 480.2, and 482 to increase from 45 to 90 the number of days a legal entity has to report a change in ownership or change in control to the BOE. *§480.1, §480.2, §482*

Reporting Requirement upon BOE Request. Amends Section 482 to increase from 45 to 90 the number of days a legal entity has to comply with a written request to file a LEOP COS with the BOE timely. It also makes conforming amendments to the required "Important Notice" that must be printed on the LEOP COS in Sections 480.1 and 480.2. *§480.1, §480.2, §482*

Penalty. This bill does not change the penalty amount. It amends Section 482(b)(1) to clarify that the county assessor is to levy the penalty and that the penalty is for failure to file the LEOP COS with the BOE. It clarifies that the penalty also applies when an incomplete LEOP COS is filed and a second request to complete the LEOP COS is not satisfied. It also adds paragraph (2) to Section 482(b) to allow for penalty abatement when a BOE's written request to file a LEOP COS was based on erroneous information, as specified.

LEOP BACKGROUND

The BOE's Legal Entity Ownership Program (LEOP) started in January 1983 as a result of Chapter 1141 of the Statutes of 1981 (AB 152). The resulting Sections 480.1 and 480.2 of the Revenue and Taxation Code require the BOE to participate in the discovery of changes in control and ownership of corporations, partnerships, and other legal entities. It was recognized that such events, which are not evidenced by a recorded document, would fall outside the parameters of assessors' normal means for discovering changes in ownership. Independent discovery of these changes by property tax administrators is difficult because ordinarily there is no recorded deed or notice of a transfer of an ownership interest in a legal entity.

Under the LEOP, the BOE:

- Receives a list from the FTB of legal entities that have reported a change in control or change in ownership on their income tax returns.
- Monitors business publications, such as *Mergers & Acquisitions* and the Wall Street Journal.
- Receives referrals from assessors as a result of information obtained in local publications or business property statement filings.

- Sends a LEOP COS called the "Statement of Change in Control or Ownership of Legal Entities" to each entity. http://www.boe.ca.gov/proptaxes/leop.htm
- Analyzes completed LEOP COS's to determine whether there has been a change in control or ownership.
- Notifies county assessors of changes in control and ownership.

PART 3
CHANGE IN OWNERSHIP PENALTIES – ABATEMENT
Revenue and Taxation Code Section 483

CURRENT LAW

Section 1620 provides that the board of supervisors of any county may by ordinance create assessment appeals boards for the county to equalize the valuation of taxable property within the county. Thus, in all counties in California either one or more assessment appeals boards or a county board of supervisors perform the duties of a local board of equalization. Nineteen of the 58 counties have not established assessment appeals boards.

Section 482 provides that a penalty applies if a COS or LEOP COS, as required by Sections 480, 480.1, or 480.2, is not timely filed. Section 483 allows the assessee to make a written application for abatement of the penalty to the "county board of supervisors." The county board of supervisors may order the penalty abated if the assessee establishes to their satisfaction that the failure to file the COS or LEOP COS timely was due to reasonable cause and not due to willful neglect.

Despite the reference to the "county board of supervisors," the proper body for an assessee to request penalty abatement of a COS or LEOP COS penalty is:

- with the assessment appeals board in those counties where the board of supervisors has established assessment appeals boards.
- with the local board of equalization where the board of supervisors sits as the county board of equalization. While a county board of equalization is comprised of the members of the county board of supervisors, the two boards are distinct constitutional bodies and act in different capacities.

Furthermore, Section 1605.5(b) expressly provides that the "county board of equalization" is to hear and decide issues with respect to penalties assessed under Section 482.

PROPOSED LAW

This bill amends Section 483 to add paragraph (2) to subdivision (c) to provide that, for purposes of subdivision (c), if the county board of supervisors has created an assessment appeals board pursuant to Section 1620, any reference to the term "county board of supervisors" means the "assessment appeals board." Subdivision (c) of Section 483 only relates to a LEOP COS required to be filed with the BOE. Subdivisions (a) and (b) of Section 483 relate to a COS required to be filed with the local county assessor.

Legislative Background

Other legislation to strengthen change in ownership reporting and discovery are noted as follows:

Real Property Transfers
COS Filed with Assessors - Section 480

AB 843 (2007) Eng This BOE sponsored bill was vetoed. It included provisions similar to this bill for a COS but it increased the number of days to file a statement from 45 days to 60 days (rather than 90 days as this bill proposes), increased the penalty cap to $10,000 (rather than $20,000), and did not increase the penalty cap on homes.

AB 926 (2006) Chu This BOE sponsored bill was vetoed. It included provisions similar to this bill for a COS but it increased the number of days to file a statement from 45 days to 60 days (rather than 90 days as this bill proposes), increased the penalty cap to $10,000 (rather than $20,000), and did not increase the penalty cap on homes. This bill differed from AB 843 above in that it did not specify the mailing address to be used in mailing a COS.

Legal Entity Ownership Interest Transfers
LEOP COS Filed with BOE - Section 480.1 and 480.2

SB 816 (Ducheny) Stats. 2009, Chapter 622 This California Assessors' Association sponsored bill established penalties in Section 482 when a legal entity does not self report a change in control or change in ownership under Section 64(c) or (d) to the BOE within 45 days of the event. *§§480.1, 480.2, and 482*

It also eliminated automatic penalty extinguishment when a legal entity initially failed to respond to a BOE written request to file a LEOP COS, but responded upon a second request within 60 days. *§§482 and 483*

SB 17 (Escutia – 2005) and SB 17 (Escutia – 2003) In addition to establishing a penalty if a legal entity does not file a LEOP COS with the BOE within 60 days after the date that a change in control or change in ownership occurs (since enacted by SB 816 in 2009), these bills would have also (1) required legal entities to provide information, records, and documents necessary to ascertain if the legal entity has undergone a change in ownership or change in control under Section 64 (c) or (d) upon the written request of the BOE or the assessor and (2) provided that the BOE or the assessor may issue subpoenas for the attendance of witnesses or the production of information or records, if any person fails to provide required information or records for the purpose of securing change in ownership information.

Guide to Change in Ownership Reporting Statutes

RTC Section	Subject *Click on link to view sample forms*
64(e)	State Income Tax Return Questions • Corporate – Form 100 - Question J • Partnership – Form 565 - Question T • LLC - Form 568 - Question O • Filed with FTB • FTB refers to BOE for Legal Entity Ownership Program (LEOP)
480	Change In Ownership Statement (COS) • Transfers of Real Property • Filed with local county assessor
480.1	LEOP COS • Transfers of Legal Entity Interests • Legal Entity Ownership Program (LEOP) • Change In Control under §64(c) • Filed with BOE
480.2	LEOP COS • Transfers of Legal Entity Interests • Legal Entity Ownership Program (LEOP) • Change In Ownership under §64(d) • Filed with BOE
480.3	Preliminary Change in Ownership Report (PCOR) • Filed at document recording • Filed with local county recorder
480.4	Preliminary Change in Ownership Report - Report contents
481	COS and PCOR – Confidentiality
482	Failure to File Penalties • COS - §482(a) [Penalties related to §480] • LEOP COS §482(b) [Penalties related to §§480.1 and 480.2]
483	Failure to File Penalties – Penalty Abatement • COS §483(a) and (b) [Penalties related to §482(a)] • LEOP COS §483(c) [Penalties related to §482(b)]

COMMENTS

Sponsor and Purpose. This bill is sponsored by the California Assessors' Association to (1) strengthen and improve change in ownership reporting and discovery by increasing the penalty cap, (2) give taxpayers more time to file a COS with the assessor and a LEOP COS with the BOE before penalties for failure to file will be levied, and (3) provide for automatic penalty abatement in specified cases involving a LEOP COS filed with the BOE.

Amendments. The **May 11, 2011** amendments require a written request to file a COS to specify the real property or manufactured home to which it pertains and require any

resulting penalty notice for failure to file the COS to identify the parcel or parcels to which it pertains. Th**e May 3, 2011** amendments delete language added in the "Important Notice," as suggested in the prior analysis, due to space constraints on the COS. The amendments also specify the assessor is to determine when erroneous information was used in requesting a LEOP COS to be filed and (2) specify that the assessor is to abate the penalty as suggested in the Senate Governance and Finance Committee analysis of this bill.

Part 1. Real Property Transfers
Change in Ownership Statements Filed with Assessors - Section 480

1. **Issue.** With respect to increasing the amount of the penalty, the $2,500 cap has been in law since 1981. The current penalty provisions may be ineffective as an inducement to property owners to report required information to county assessors so they may accurately assess properties after a change in ownership. This can cause assessors to spend limited resources in pursuit of information needed to properly revalue the property, which in turn causes delays in property tax billings. (Note that in the case of a LEOP COS required to be filed with the BOE, there is no such penalty cap – the penalty is 10% of assessed value.)

2. **The increased penalty will only apply to properties worth more than $2.5 million.** In practical application, the increased penalty only affects properties with an assessed value of more than $2.5 million. For example, taxes on a $1,000,000 property are $10,000 and a 10% penalty would be $1,000. Thus, the penalty for failure to file a COS would be $1,000. Likewise, taxes on a $3,000,000 property are $30,000 and a 10% penalty would be $3,000, resulting in a penalty for failure to file a change in ownership statement of $3,000. SB 507 would increase the penalty only on the $3,000,000 property, in the amount of $500, since under existing law the penalty cap would have been reached at $2,500.

3. **A lower limit for homes.** The rationale for a lower limit for homes is that fewer public resources must be expended to determine the fair market value of a residence without the financial details (such as the purchase price) that the COS would have provided. Homes are the least complicated type of property to appraise for tax purposes. Assessing officials generally have many comparable sales upon which they can make a reasonable estimate of value. Thus, the workload impact to the taxing agency to properly assess a home is significantly less than it would be for a unique property, such as a commercial property, where there are fewer, if any, comparable sales of property of a similar type, use, and size in the immediate vicinity.

4. **The penalty only applies after a formal written request has been made and ignored.** Existing law requires property to be reappraised at its current full market value whenever it changes ownership, and when such a change occurs, the law requires the owner to report the change in ownership to the assessor by filing a COS. However, the law *does not* impose a penalty for failure to file the COS **unless and until the assessor makes a written request** and the owner subsequently fails to file the COS within 45 days. The 45 day period (which this bill would increase to 90 days) runs from the date the written request is made, not the actual date of the change in ownership. It can take months and sometimes years, in the case where a deed was not recorded, for the assessor to uncover an unreported change in

ownership and thus mail the COS. When the COS is not filed, assessors must spend additional time and resources pursuing the information necessary to properly revalue the property. And, if multiple prior years' assessments must be adjusted, it will result in roll corrections and escape assessments, compounding the administrative cost.

5. **COSs filed with the assessor help avoid unnecessary administrative costs to appraise a property where the assessment may subsequently be reversed once the taxpayer responds because of the resulting increased taxes.** Many documents that are recorded are ultimately not reassessable events. COSs and PCORs help the assessor determine if the transfer is eligible for one of the many exclusions available. The COS asks specific questions about transfers that would not cause the property to be reassessed. For example, a deed may be recorded to remove a person from title that only held a security interest – this is not a reassessable event.

6. **Multiple opportunities to comply before a penalty would be levied upon a taxpayer.** Property owners have three opportunities to file the necessary information with the local assessor.

   - **A PCOR can be filed concurrently when the deed is recorded**. In fact, for real property transactions in which title and escrow companies are involved, as part of their customer service provided, the PCOR is typically filled out for the property owner (which the new owner signs during the closing process) and filed when the escrow company presents the deed for recordation.
   - **No penalty applies if a person properly notifies the assessor, as required by law, that he or she has purchased the property.** As noted above, the law requires that new buyers of property inform the assessor's office within 45 days of a change in ownership that they have acquired the property by filing a COS. There is no penalty for not filing the statement within 45 days.
   - **A taxpayer that has failed to file a PCOR *and* failed to file a COS within 90 days of the actual date of purchase may return the COS mailed to the taxpayer by the assessor. If this is accomplished within 90 days of the date of the written request then no penalty will be applied.** The date of the written request could be a year or more later than the sale and the taxpayer could file a form at anytime before that time expires.

Part 2. Legal Entity Ownership Interest Transfers
Change in Ownership Statements Filed with BOE - Section 480.1 and 480.2

1. **Issue.** Because of changes made by SB 816, which was also sponsored by the CAA, legal entities are at greater risk of penalties if they fail to timely self report a change in ownership to the BOE. This bill gives legal entities more time to comply.

   - **Self Reporting Requirement.** SB 816 created a penalty for failure to self report a Section 64(c) or (d) reassessable event, but did not increase the number of days a legal entity had to fulfill this reporting requirement to the BOE. Previously, while the law required that the legal entity report the event to BOE within 45 days, there was no penalty for failure to do so. Thus, there was no consequence

for not complying. This bill would give legal entities an additional 45 days to self report a change in control or change in ownership with the BOE.

- **Written Requests.** This bill also gives legal entities more time to respond should the BOE request that a legal entity file a LEOP COS in performing its duties to aid in the discovery of unreported events. SB 816 eliminated automatic penalty extinguishment when a legal entity initially failed to respond to a BOE written request to file a LEOP COS, but responded upon a second request within 60 days. This bill would give legal entities an additional 45 days to respond to a BOE request to file a LEOP COS.
- **Written requests generated by legal entities' answers on California income tax returns.** Assessors report an instance where a legal entity erroneously answered "yes" to questions on its California income tax return indicating a possible change in ownership. This generated a request by the BOE that a LEOP COS be completed by the taxpayer. The legal entity subsequently failed to respond to the BOE's request to file LEOP COS, which triggered a penalty on property owned by the legal entity. This bill is intended to allow for abatement of penalty by the assessor in the case of erroneous return information.
- **Abatement**. SB 816 deleted a provision that allowed for automatic extinguishment of a penalty for failure to respond to the BOE by giving the legal entity a second opportunity to file the statement within 60 days of receiving notice of the penalty. To alleviate the impact of SB 816, this bill is intended to restore automatic extinguishment of penalties in cases where the legal entity itself erroneously triggered the inquiry that resulted in the levy of a penalty.

2. **What erroneous information might trigger a BOE inquiry?** The BOE is required to participate in the discovery of unreported events. To that end, it could send a LEOP COS to a legal entity for any number of reasons. The purpose of the penalty for non-response is to ensure that legal entities have an incentive to respond to the BOE inquiry. That said, what type of erroneous information would the BOE or the assessor be using to have caused a LEOP COS to be sent to the taxpayer? If a legal entity was asked to file a LEOP COS because the BOE was investigating information in the media about the purchase of a company, the details of which did not meet the standard of a reassessable event, would that be considered erroneous information? Should there be any consequence when a legal entity does not respond to the BOE inquiry? Further, how would a company show that information was erroneous?

3. **Suggested amendments.** If the intent of this bill is limited to the specific instance in which the legal entity itself erroneously triggered the BOE to send a LEOP COS**,** then it is suggested that the amendments to provide automatic abatement be recast for clarity and precision and moved to Section 483 as follows:

~~482 (b) (2) If a written request to file a change in ownership statement, including a written request to file a complete change in ownership statement, is mailed by the board to a person or legal entity as specified in paragraph (1), and the assessor determines that the written request was based on erroneous information in the possession of the board provided by any person or entity, including, but not limited to, the Franchise Tax Board, a county assessor, or board staff, the penalty added by this subdivision shall be abated if the person or legal entity required to comply with the written request notifies both the board and the county assessor responsible~~

~~for assessing the penalty of the error no later than 60 days after the date on which the person or legal entity is notified of the penalty.~~

483 (c) (1) If a person or legal entity establishes to the satisfaction of the county board of supervisors that the failure to file the change in ownership statement within the time required by subdivision (b) of Section 482 was due to reasonable cause and not due to willful neglect, and has filed the statement with the State Board of Equalization, the county board of supervisors may order the penalty be abated, provided the person or legal entity has filed with the county board of supervisors a written application for abatement of the penalty no later than 60 days after the date on which the person or legal entity was notified of the penalty by the assessor.

(2) If a person or legal entity fails to file the change in ownership statement within the time required by subdivision (b) of Section 482, in the case where the assessor determines that the request to file a statement was the result of a person or legal entity that erroneously answered yes to questions on returns filed with the Franchise Tax Board pursuant to subdivision (e) of Section 64, the assessor shall automatically extinguish the penalty, provided the person or legal entity has filed with the assessor a written application for extinguishment of the penalty on that basis no later than 60 days after the date on which the person or legal entity was notified of the penalty by the assessor.

If the penalty is abated ~~by the county board of supervisors~~, it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

Part 3. Penalty Abatement

1. **Issue.** The reference in Section 483 to the board of supervisors creates confusion to tax administrators and taxpayers and is misleading. For clarity, this bill specifies in Section 483(c)(2) that in those counties with assessment appeals boards, the appeals board will hear penalty abatement appeals for late filed or failure to file penalty related issues.

2. **This clarification is limited to a LEOP COS required to be filed with the BOE.** This is because the clarification in Section 483(c) relates only to penalties under Sections 480.1 and 480.2 (the penalties imposed by Section 482(b)). However, clarification is also needed in subdivision (a) of Section 483. (Note that the reference to the board of supervisors in subdivision (b) is correct as it relates to the alternative procedure requiring a resolution adopted by the board of supervisors.)

3. **Related Legislation.** SB 947 (Committee on Governance and Finance), sponsored by the BOE, also proposes amendments to Section 483 to clarify that in those counties that have established an assessment appeals board, the appeals board rather than the board of supervisors is to hear appeals for both COS and LEOP COS related penalties. It is suggested that the amendments proposed by SB 947 be adopted since they are more comprehensive and address both subdivision (a) and (c) of Section 483. This will also resolve chaptering out issues should both bills be enacted.

483. (a) If the assessee establishes to the satisfaction of the county board of ~~supervisors~~ equalization or the assessment appeals board that the failure to file the change in ownership statement within the time required by subdivision (a) of Section 482 was due to reasonable cause and not due to willful neglect, and has filed the statement with the assessor, the county board of ~~supervisors~~ equalization or the assessment appeals board may order the penalty abated, provided the assessee has filed with the county board of ~~supervisors~~ equalization or the

assessment appeals board a written application for abatement of the penalty no later than 60 days after the date on which the assessee was notified of the penalty.

If the penalty is abated it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

(b) The provisions of subdivision (a) shall not apply in any county in which the board of supervisors adopts a resolution to that effect. In that county the penalty provided for in subdivision (a) of Section 482 shall be abated if the assessee files the change of ownership statement with the assessor no later than 60 days after the date on which the assessee was notified of the penalty.

If the penalty is abated it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

(c) If a person or legal entity establishes to the satisfaction of the county board of ~~supervisors~~ equalization or the assessment appeals board that the failure to file the change in ownership statement within the time required by subdivision (b) of Section 482 was due to reasonable cause and not due to willful neglect, and has filed the statement with the State Board of Equalization, the county board of ~~supervisors~~ equalization or the assessment appeals board may order the penalty be abated, provided the person or legal entity has filed with the county board of ~~supervisors~~ equalization or the assessment appeals board a written application for abatement of the penalty no later than 60 days after the date on which the person or legal entity was notified of the penalty by the assessor.

If the penalty is abated ~~by the county board of supervisors,~~ it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

COST ESTIMATE

The BOE would incur absorbable costs to modify the change in ownership statements and related documents for both forms.

REVENUE ESTIMATE

This measure has no direct revenue impact. Increasing the penalty for not reporting and filing a COS with the assessor is an incentive for property owners to comply with existing law. In addition, with respect to a COS, it is possible that more penalty monies would be collected, for a limited class of properties, but only after a failure to timely respond. With respect to a LEOP COS, it is possible that fewer penalties will be levied with the additional time to file provided and the automatic abatement provisions.

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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.