

[Assembly Bill 567](#) (Gipson)

Date: 02/24/15

Program: Property Taxes

Sponsor: BOE Chairman Horton

RTC Section Code 481

Effective: January 1, 2016

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**Summary:** Allows the Board of Equalization (BOE) or the assessor to disclose that a person or legal entity has filed a legal entity change in ownership statement with the BOE or that the BOE has issued a determination to the assessor relating to the statement filed.

**Purpose:** To permit disclosure of basic, factual information.

**Fiscal Impact Summary:** No impact.

**Existing Law:** The law requires the BOE and the assessor to hold secret all information furnished in the change in ownership statement.<sup>1</sup> The law also provides that these statements are not public documents and are not open to inspection except to explicitly authorized persons for certain purposes.<sup>2</sup> The law requires certain change in ownership statements to be filed directly with the BOE.

Existing law requires the public to have access to certain information. Both the assessment roll<sup>3</sup> and a quarterly updated list of all property transfers<sup>4</sup> occurring in the prior two years in each county must be available to the public.

**Proposed Law:** This bill provides that the BOE and the assessor are not required to hold secret the fact that (1) a legal entity change in ownership statement has been filed with the BOE or (2) the BOE has issued a determination to the assessor relating to a change in ownership statement filed with the BOE.<sup>5</sup>

The bill also includes detailed Legislative findings and declarations.

**In General. Property Tax System.** In 1978 voters changed California's property tax system with the approval of Proposition 13. Under this system, a property's assessed value is based on its 1975 fair market value until the property changes ownership. Thereafter, annual assessed value increases are limited to 2% or the inflation rate, whichever is less. When the property changes ownership, it is reassessed to its current market value and future increases to that value are subject to the same limits.

**Change in Ownership.** When a "change in ownership" occurs, the law requires the assessor to reassess the property to its current fair market value.<sup>6</sup> Different laws apply to when a person buys real estate directly and when a person buys a *legal entity* that owns real estate.

**Interests in Real Property.** RTC Section 61(j) provides that a change in ownership includes the transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner or any other person. As a general rule, the law requires a reassessment equal to the percentage interest transferred.

**Interests in Legal Entities.** Section 64 sets forth the change in ownership provisions for the purchase or transfer of ownership interests (e.g., stock in a corporation, interests in a limited liability company, or interests in a partnership) in legal entities that own real property. As a general rule, under Section 64(a),

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<sup>1</sup> Revenue and Taxation Code (RTC) [Section 481](#).

<sup>2</sup> RTC [Section 408](#) and [481](#); RTC [Section 408.2](#) (Los Angeles County only).

<sup>3</sup> RTC [Section 601](#) and [602](#), Property Tax [Rule 252](#).

<sup>4</sup> RTC [Section 408.1](#).

<sup>5</sup> RTC [Section 64](#) (c), (d).

<sup>6</sup> California Constitution Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60 - 69.5.

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transfers of ownership interests in legal entities do not constitute a change in ownership (and, therefore, no reassessment) of the legal entity's real property. However, there are two exceptions to the general rule as follows:

- **Change in Legal Entity Control.** Section 64(c)(1) requires reassessment when any person or entity obtains control through direct or indirect ownership or control, of more than 50% of corporation voting stock, or obtains more than a 50% ownership interest in any other type of legal entity. The reassessment covers all real property owned by the acquired legal entity (and any entity under its control).
- **Cumulative Transfers by "Original Co-owners."**<sup>7</sup> Section 64(d) requires reassessment when voting stock or other ownership interests representing cumulatively more than 50% of the total interests in a legal entity are transferred by any of the "original co-owners" in one or more transactions. The reassessment covers the real property previously excluded from change in ownership under Section 62(a)(2).

**Self-Reporting Requirement.** The law requires legal entities to file a change in ownership statement (LEOP COS<sup>8</sup>) with the BOE within 90 days of a change in control or change in ownership 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. A penalty applies if it is not filed within 90 days. The penalty amount is 10% 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.

**Requirement to File Upon Request.** The BOE searches for unreported changes in control and ownership of legal entities under Section 64(c) and (d). Annually, the BOE canvasses legal entities with a query on the state income tax return. Additionally, the BOE monitors business publications. Assessors and other interested parties also send referrals reporting possible changes. Using these leads, the BOE sends a LEOP COS to the entity to complete and file with the BOE. A legal entity that fails to respond to a request to complete the LEOP COS is subject to the same penalty provisions described above.

**Change in Ownership Tracking.** RTC Section 255.7 requires the county recorder to provide the assessor with a copy of an ownership transfer document as soon as possible when a change in ownership is recorded. 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" with no grant deed or other document recorded that could alert the assessor to a reassessment. These types of changes in ownership should be reported to directly to the BOE by the entity involved.

**LEOP.** As noted, it is difficult for property tax administrators to independently discover reassessable events involving legal entities because ordinarily there is no recorded deed or notice of a transfer of an ownership interest in a legal entity. Because of these difficulties, the law requires the BOE to participate in the discovery of changes in ownership and changes in control of legal entities under Section 64(c) and (d)<sup>9</sup>.

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<sup>7</sup> **Proportional Ownership Interests Exclusion Creates "Original Co-owner" 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 co-owners**" for purposes of tracking subsequent transfers by original co-owners of those interests. When such transfers cumulatively exceed 50%, 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).

<sup>8</sup> Legal Entity Ownership Program (LEOP) Change of Ownership (COS), Form BOE-100-B, *Statement of Change in Control and Ownership of Legal Entities*, detailed on page 6 of this analysis.

<sup>9</sup> Chapter 1141 of the Statutes of 1981 (AB 152).

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The BOE participates in this discovery through a program called the Legal Entity Ownership Program (LEOP). Under the LEOP, which started in January 1983, the BOE:

- Receives a list of legal entities from the Franchise Tax Board (FTB) 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 that might have experienced a change in control or ownership.
- 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.

**Annual Canvassing.** Section 64(e) requires an annual canvassing of legal entities via the state income tax return. The FTB transmits to the BOE 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 for further investigation. The BOE makes a written request to the legal entity to file a LEOP COS to determine if it experienced a change in control or ownership or if it obtained control of another entity where the entity experiencing the change owned real property in California that should be reassessed

The BOE also makes formal written requests to legal entities to investigate other possible changes in ownership based on information obtained from monitoring business publications and local assessors and interested parties referrals. Additionally, at the local level, businesses are canvassed via the annual business property statement filed with the local assessor.

**Guide to LEOP Change in Ownership Reporting Statutes**

RTC Section	Subject <i>Click on link to view sample forms</i>
64(e)	<a href="#">State Income Tax Return Questions</a> <ul style="list-style-type: none"> <li>• Corporate – <a href="#">Form 100</a> - Question J</li> <li>• Partnership – <a href="#">Form 565</a> - Question T</li> <li>• LLC - <a href="#">Form 568</a> - Question O</li> <li>• Filed with FTB</li> <li>• FTB transmits information to BOE</li> </ul>
480.1	<a href="#">LEOP COS</a> <ul style="list-style-type: none"> <li>• Transfers of Legal Entity Interests</li> <li>• Legal Entity Ownership Program (LEOP)</li> <li>• Change In Control under §64(c)</li> <li>• Filed with BOE</li> </ul>
480.2	<a href="#">LEOP COS</a> <ul style="list-style-type: none"> <li>• Transfers of Legal Entity Interests</li> <li>• Legal Entity Ownership Program (LEOP)</li> <li>• Change In Ownership under §64(d)</li> <li>• Filed with BOE</li> </ul>
481	LEOP COS – Confidentiality
482	Failure to File Penalties <ul style="list-style-type: none"> <li>• LEOP COS §482(b) [Penalties related to §§480.1 and 480.2]</li> </ul>
483	Failure to File Penalties – Penalty Abatement <ul style="list-style-type: none"> <li>• LEOP COS §483(c) [Penalties related to §482(b)]</li> </ul>

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**Commentary:**

- 1. The BOE and county assessors jointly administer legal entity change in ownership law.** The FTB assists in the cost effective administration of these laws by including a question on state income tax returns. The FTB collects the return response information and forwards it to the BOE. This process allows taxing agencies to annually canvass all legal entities operating in California. State agencies assist local assessors because real property owned by legal entities often undergoes a change in ownership without the public recordation of documents. Legal entity change in ownership discovery relies heavily on self-reporting to the state agencies and financial media coverage. The law requires BOE-filing because the legal entity can own property in multiple counties. The BOE relays this information to the affected local assessors who then proceed with the reassessment process.
- 2. Growing public interest.** In recent years, the disparate reassessment consequences between legal entity-owned property and property owned by individuals have caused some to question the continued appropriateness of existing legal entity change in ownership law. For example, in 2014, [AB 2372](#) (Ammiano) proposed changing the law.
- 3. The heightened awareness has resulted in an increasing number of inquiries about whether specific transactions highlighted in media reports will result in property tax reassessment.** The awareness has led to more inquiries of BOE and assessor staff regarding whether specific sales, mergers, acquisitions, and buyouts reported in the media will result in the reassessment of a legal entity's real estate holdings.
- 4. The law prohibits sharing timely, basic, factual information with the public.** Existing law requires the BOE and assessors to hold secret all information provided in a change in ownership statement, including the fact that a change in ownership has occurred. This prohibits the BOE from providing basic factual information to inquiring persons. However, this information eventually becomes known via the assessment roll once the assessor reassesses (or does not reassess) the legal entity-owned property. The delayed transparency undermines the public trust in the current property tax system as it applies to legal entity changes in ownership and fuels the perception that laws are inequitable and should be changed. Furthermore, the secrecy provisions hamper the BOE's and assessors' ability to correct misinformation, such as when organizations advocating for change use examples about companies not reporting changes to BOE.
- 5. Information contained in the statement would remain confidential.** Detailed financial information would remain protected and kept confidential under this bill.
- 6. Indirect information provided.** In 2010, after the banking crisis, the Assembly Revenue and Taxation Committee requested information from BOE about why certain banks were or were not being reassessed after various mergers and buyouts. The BOE could not reveal the information directly and instead resorted to directing the Committee to information in the public domain – such as the bank's SEC filings, the FDIC website which had posted the whole bank purchase agreement, and the bank's own press releases. The changes this bill proposes would allow the BOE to directly answer the questions raised.
- 7. Recorded real property transfers occurring in every county must be made available to the public.** Unlike transfers of real property interests, legal entity changes in ownership usually don't result in a document being recorded with the county recorder. We are not certain as to the reasons for requiring secrecy of legal entity changes in ownership while at the same time requiring public disclosure of other transfers.

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**Administrative Costs:** Pending. The BOE's cost to administer this bill will depend upon the number of inquiries it receives, if broad public records act requests will be made, and whether BOE will maintain data on its website accessible to the public at all times to comply with the law. These costs are estimated to be minor or absorbable.

**Revenue Impact:** No direct impact.