AMENDED IN ASSEMBLY SEPTEMBER 8, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 448

Introduced by Assembly Member Ammiano

February 15, 2011

An act to amend Sections 64, 480.1, 480.2, and 482 of, and to add ~~Section 480.9~~ *Sections 480.9, 486, 486.5, and 488* to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 448, as amended, Ammiano. Property taxation: change in ownership.

The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, "full cash value" is defined as the assessor's valuation of real property as shown on the 1975–76 tax bill under "full cash value" or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. Existing property tax law specifies those circumstances in which the transfer of ownership interests in a corporation, partnership, limited liability company, or other legal entity results in a change in ownership of the real property owned by that entity, and generally provides that a change in ownership as so described occurs when a legal entity or other person obtains a controlling or majority ownership interest in the legal entity. Existing law also specifies other circumstances in which certain transfers of ownership interests in legal entities result in a change in ownership of the real property owned by those legal entities.

This bill would instead specify that when 100% of the ownership interests in a legal entity, as defined, are sold or transferred in a single transaction, as specified, the real property owned by that legal entity has changed ownership, whether or not any one legal entity or person that is a party to the transaction acquires more than 50% of the ownership interests. The bill would require the State Board of Equalization to notify assessors when a change in ownership as so described occurs.

Existing law requires a person or legal entity that obtains a controlling or majority ownership interest in a legal entity, or an entity that makes specified transfers of ownership interests in the legal entity, to file a change in ownership statement signed under penalty of perjury with the State Board of Equalization, as specified. Existing law requires a penalty of 10% of the taxes applicable to the new base year value, as specified, or 10% of the current year's taxes on the property, as specified, to be added to the assessment made on the roll if a person or legal entity required to file a change in ownership statement fails to do so.

This bill would require a person or legal entity acquiring ownership interests in a legal entity, when 100% of the ownership interests in the legal entity are sold or transferred, as described above, to file a change in ownership statement signed under penalty of perjury with the State Board of Equalization. This bill would increase the penalties for failure to file a change in ownership statement, as described above, from 10% to 20%.

This bill would also require, whenever there occurs any change in the ownership interests in a legal entity holding an interest in real property in this state, the person or legal entity acquiring the ownership interest of the legal entity to report the change in ownership interests to the State Board of Equalization, as provided. This bill would require, whenever there occurs a specified transfer between an individual or individuals and a legal entity or between legal entities, the legal entity to report subsequent changes in the ownership interests of the legal entity to the county assessor, as provided. This bill would state the intent of the Legislature to enact legislation to impose a penalty for failure to report these changes in ownership interests.

This bill would also require, whenever there occurs a change of an ownership interest in a legal entity holding an interest in real property, a deed to be recorded with the county recorder by the owner of the real property, even if the owner of the real property does not change.

By expanding the crime of perjury *and by imposing new duties upon local county officials with respect to changes in ownership*, this bill would impose a state-mandated local program.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would include a change in state statute that would result in a ~~tax payer~~ *taxpayer* paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The system for determining a change in ownership for the purpose of assessment of commercial property is complex and difficult to administer.

(b) Property owners use complex legal maneuvers and methods of dividing up, or obscuring, ownership patterns, in order to avoid reassessment when changes of ownership actually occur.

(c) There are many circumstances where changes of ownership have legally taken place, which are often not known to the assessor because they are deliberately obscured, such as keeping the property in the name of the old property owner even when a company is purchased.

(d) Deeds are filed that describe ownership patterns of such complexity that it is difficult for the legal powers of the counties, and the enforcement powers of the assessor, to be exercised.

(e) Transactions occur that should be identified as changes of ownership, such as a 100-percent purchase of a company, which avoid reassessment because of the ability to divide ownership shares.

(f) Penalties for obscuring, or failing to report, transactions are insufficient to provide incentives to purchasers to self-report, making the job of identifying these transactions by the assessor and the State Board of Equalization more difficult.

(g) Changes in ownership may not trigger reassessment because of leasehold interests that are not transparent to the assessor.

(h) Therefore, it is the intent of the Legislature to provide all of the following:

(1) Greater clarity with regard to those circumstances in which a change in ownership has occurred.

(2) Greater transparency in ownership patterns with respect to the filing of deeds and with respect to other real property and financial transactions.

(3) Improved reporting and stronger enforcement and penalties for the failure to report changes in ownership.

(i) It is further the intent of the Legislature that changes in ownership in which 100 percent of the ownership of a business, whether through mergers, private equity buyouts, transfer of ownership from one financial institution to another, transfers of shares of limited liability companies or trusts, transfers of partnership shares, and other changes by which 100 percent is transferred shall constitute a change of ownership subject to reassessment.

SEC. 2. Section 64 of the Revenue and Taxation Code is amended to read:

64. (a) Except as provided in subdivision (i) of Section 61 and subdivisions (c) and (d), the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership or limited liability company interests, does not constitute a transfer of the real property of the legal entity. This subdivision applies to the purchase or transfer of ownership interests in a partnership

without regard to whether it is a continuing or a dissolved partnership.

(b) Any corporate reorganization, where all of the corporations involved are members of an affiliated group, and that qualifies as a reorganization under Section 368 of the United States Internal Revenue Code and that is accepted as a nontaxable event by similar California statutes, or any transfer of real property among members of an affiliated group, or any reorganization of farm credit institutions pursuant to the federal Farm Credit Act of 1971 (Public Law 92-181), as amended, shall not be a change of ownership. The taxpayer shall furnish proof, under penalty of perjury, to the assessor that the transfer meets the requirements of this subdivision.

For purposes of this subdivision, "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if both of the following conditions are met:

(1) One hundred percent of the voting stock, exclusive of any share owned by directors, of each of the corporations, except the parent corporation, is owned by one or more of the other corporations.

(2) The common parent corporation owns, directly, 100 percent of the voting stock, exclusive of any shares owned by directors, of at least one of the other corporations.

(c) (1) (A) When a corporation, partnership, limited liability company, other legal entity, or any other person obtains control through direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity through the purchase or transfer of corporate stock, partnership, or limited liability company interest, or ownership interests in other legal entities, including any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, the purchase or transfer of that stock or other interest shall be a change of ownership of the real property owned by the corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained.

(B) (i) When 100 percent of the ownership interests in a legal entity are sold or transferred in a single transaction to a legal entity or person, whether by merger, acquisition, private equity buyout, transfer of partnership shares, or any other means by which a legal entity or person acquires the ownership interests of another legal entity, including the subsidiaries or affiliates of the legal entity and the property owned by those subsidiaries or affiliates, the purchase or transfer of the ownership interests shall be a change of ownership of the real property owned by the legal entity, whether or not any one legal entity or person that is a party to the transaction acquires more than 50 percent of the ownership interests.

(ii) For purposes of this subparagraph:

(I) "Legal entity" means a corporation, partnership, limited liability company, or other legal entity.

(II) "Ownership interests" means corporate voting stock, partnership capital and profits interests, limited liability company membership interests, and other ownership interests in legal entities.

(III) "Single transaction" means a transaction in which 100 percent of the ownership interests are sold or transferred in either one calendar year or within a three-year period beginning on the date of the original transaction when any percentage of ownership interests are sold or transferred.

(2) On or after January 1, 1996, when an owner of a majority ownership interest in any partnership obtains all of the remaining ownership interests in that partnership or otherwise becomes the sole partner, the purchase or transfer of the minority interests, subject to the appropriate application of the step-transaction doctrine, shall not be a change in ownership of the real property owned by the partnership.

(d) If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in that legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50 percent of the interests in the entity.

A transfer of shares or other ownership interests that results in a change in control of a corporation, partnership, limited liability company, or any other legal entity is subject to reappraisal as provided in subdivision (c) rather than this subdivision.

(e) To assist in the determination of whether a change of ownership has occurred under subdivisions (c) and (d), the Franchise Tax Board shall include a question in substantially the following form on returns for partnerships, banks, and corporations (except tax-exempt organizations):

If the corporation (or partnership or limited liability company) owns real property in California, has cumulatively more than 50 percent of the voting stock (or more than 50 percent of total interest in both partnership or limited liability company capital and partnership or limited liability company profits) (1) been transferred by the corporation (or partnership or limited liability company) since March 1, 1975, or (2) been acquired by another legal entity or person during the year? (See instructions.)

If the entity answers "yes" to (1) or (2) in the above question, then the Franchise Tax Board shall furnish the names and addresses of that entity and of the stock or partnership or limited liability company ownership interest transferees to the State Board of Equalization.

(f) The board may prescribe regulations as may be necessary to carry out the purposes of the act adding this subdivision.

SEC. 3. Section 480.1 of the Revenue and Taxation Code is amended to read:

480.1. (a) Whenever there is a change in control or a change in ownership of any corporation, partnership, limited liability company, or other legal entity, as defined in subdivision (c) of Section 64, a signed change in ownership statement as provided for in subdivision (b), shall be filed by the person or legal entity acquiring ownership of the corporation, partnership, limited liability company, or other legal entity with the board at its office in Sacramento within 45 days from the date of the change in control or the change in ownership of the corporation, partnership, limited liability company, or other legal entity. The statement shall list all counties in which the corporation, partnership, limited liability company, or legal entity owns real property.

(b) The change in ownership statement as required pursuant to subdivision (a), shall be declared to be true under penalty of perjury and shall give such information relative to the ownership acquisition transaction as the board shall prescribe after consultation with the California Assessors' Association. The information shall include, but not be limited to, a description of the property owned by the corporation, partnership, limited liability company, or other legal entity, the parties to the transaction, and the date of the ownership acquisition. The change in ownership statement shall not include any question which is not germane to the assessment function. The statement shall contain a notice that is printed, with the title *in* at least 12-point boldface type and the body in at least 8-point boldface type, in the following form:

"Important Notice"

"The law requires any person or legal entity acquiring ownership in any corporation, partnership, limited liability company, or other legal entity owning real property in California subject to local property taxation to complete and file a change in ownership statement with the State Board of Equalization at its office in Sacramento. The change in ownership statement must be filed within 45 days from the date of the change in control or the change in ownership of a corporation, partnership, limited liability company, or other legal entity. The law further requires that a change in ownership statement be completed and filed whenever a written request is made therefor by the State Board of Equalization, regardless of whether a change in control or a change in ownership of the legal entity has occurred. The failure to file a change in ownership statement within 45 days from the earlier of the date of the change in control or a change in ownership of the corporation, partnership, limited liability company, or other legal entity, or the date of a written request by the State Board of Equalization, results in a penalty of 20 percent of the taxes applicable to the new base year value reflecting the change in control or the change in ownership of the real property owned by the corporation, partnership, limited liability company, or legal entity (or 20 percent of the current year's taxes on that property if no change in control or change in ownership occurred). This penalty will be added to the assessment roll and shall be collected like any other delinquent property taxes, and be subject to the same penalties for nonpayment."

(c) In the case of a corporation, the change in ownership statement shall be signed either by an officer of the corporation or an employee or agent who has been designated in writing by the board of directors to sign such statements on behalf of the corporation. In the case of a partnership, limited liability company, or other legal entity, the statement shall be signed by an officer, partner, manager, or an employee or agent who has been designated in writing by the partnership, limited liability company, or legal entity.

(d) No person or entity acting for or on behalf of the parties to a transfer of real property shall incur liability for the consequences of assistance rendered to the transferee in preparation of any change in ownership statement, and no action may be brought or maintained against any person or entity as a result of that assistance.

Nothing in this section shall create a duty, either directly or by implication, that such assistance be rendered by any person or entity acting for or on behalf of parties to a transfer of real property.

(e) The board or assessors may inspect any and all records and documents of a corporation, partnership, limited liability company, or legal entity to ascertain whether a change in control or a change in ownership, as defined in subdivision (c) of Section 64, has occurred. The corporation, partnership, limited liability company, or legal entity shall upon request, make those documents available to the board during normal business hours.

SEC. 4. Section 480.2 of the Revenue and Taxation Code is amended to read:

480.2. (a) Whenever there is a change in ownership of any corporation, partnership, limited liability company, or other legal entity, as defined in subdivision (d) of Section 64, a signed change in ownership statement as provided in subdivision (b) shall be filed by the corporation, partnership, limited liability company, or other legal entity with the board at its office in Sacramento within 45 days from the date of the change in ownership of the corporation, partnership, limited liability company, or other legal entity. The statement shall list all counties in which the corporation, partnership, limited liability company, or legal entity owns real property.

(b) The change in ownership statement required pursuant to subdivision (a) shall be declared to be true ~~and~~ under penalty of perjury and shall give such information relative to the ownership interest acquisition transaction as the board shall prescribe after consultation with the California Assessors' Association. The information shall include, but not be limited to, a description of the property owned by the corporation, partnership, limited liability company, or other legal entity, the parties to the transaction, the date of the ownership interest acquisition, and a listing of the "original coowners" of the corporation, partnership, limited liability company, or other legal entity prior to the transaction. The change in ownership statement shall not include any question which is not germane to the assessment function. The statement shall contain a notice that is printed, with the title in at least 12-point boldface type and the body in at least 8-point boldface type, in the following form:

"Important Notice"

"The law requires any corporation, partnership, limited liability company, or other legal entity owning real property in California subject to local property taxation and transferring shares or other ownership interest in such legal entity which constitute a change in ownership pursuant to subdivision (d) of Section 64 of the Revenue and Taxation Code to complete and file a change in ownership statement with the State Board of Equalization at its office in Sacramento. The change in ownership statement must be filed within 45 days from the date that shares or other ownership interests representing cumulatively more than 50 percent of the total control or ownership interests in the entity are transferred by any of the original coowners in one or more transactions. The law further requires that a change in ownership statement be completed and filed whenever a written request is made therefor by the State Board of Equalization, regardless of whether a change in ownership of the legal entity has occurred. The failure to file a change in ownership statement within 45 days from the earlier of the date of the change in ownership of the corporation, partnership, limited liability company, or other legal entity, or the date of a written request by the *State* Board of Equalization, results in a penalty of 20 percent of the taxes applicable to the new base year value reflecting the change in ownership of the real property owned by the corporation, partnership, limited liability company, or legal entity (or 20 percent of the current year's taxes on that real property if no change in ownership occurred). This penalty will be added to the assessment roll and shall be collected like any other delinquent property taxes, and be subject to the same penalties for nonpayment."

(c) In the case of a corporation, the change in ownership statement shall be signed either by an officer of the corporation or an employee or agent who has been designated in writing by the board of directors to sign such statements on behalf of the corporation. In the case of a partnership, limited liability company, or other legal entity, the statement shall be signed by an officer, partner, manager, or an employee or agent who has been designated in writing by the partnership, limited liability company, or legal entity.

(d) No person or entity acting for or on behalf of the parties to a transfer of real property shall incur liability for the consequences of assistance rendered to the transferee in preparation of any change in ownership statement, and no action may be brought or maintained against any person or entity as a result of that assistance.

Nothing in this section shall create a duty, either directly or by implication, that such assistance be rendered by any person or entity acting for or on behalf of parties to a transfer of real property.

(e) The board or assessors may inspect any and all records and documents of a corporation, partnership, limited liability company, or legal entity to ascertain whether a change in ownership as defined in subdivision (d) of Section 64 has occurred. The corporation, partnership, limited liability company, or legal entity shall upon request, make those documents available to the board during normal business hours.

SEC. 5. Section 480.9 is added to the Revenue and Taxation Code, to read:

480.9. The board shall notify assessors when a change in ownership described in subparagraph (B) of paragraph (1) of subdivision (c) of Section 64 has occurred.

SEC. 6. Section 482 of the Revenue and Taxation Code is amended to read:

482. (a) If a person or legal entity required to file a statement described in Section 480 fails to do so within 45 days from the date of a written request by the assessor, a penalty of either: (1) one hundred dollars ($100), or (2) 10 percent of the taxes applicable to the new base year value reflecting the change in ownership of the real property or manufactured home, whichever is greater, but not to exceed two thousand five hundred dollars ($2,500) if the failure to file was not willful, shall, except as otherwise provided in this section, be added to the assessment made on the roll. The penalty shall apply for failure to file a complete change in ownership statement notwithstanding the fact that the assessor determines that no change in ownership has occurred as defined in Chapter 2 (commencing with Section 60) of Part 0.5. The penalty may also be applied if after a request the transferee files an incomplete statement and does not supply the missing information upon a second request.

(b) If a person or legal entity required to file a statement described in Section 480.1 or 480.2 fails to do so within 45 days from 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, a penalty of 20 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 corporation, partnership, or legal entity, or 20 percent of the current year's taxes on that property if no change in control or change in ownership occurred, shall be added to the assessment made on the roll. The penalty shall apply for failure to file a complete statement notwithstanding the fact that the board determines that no change in control or change in ownership has occurred as defined in subdivision (c) or (d) of Section 64. The penalty may also be applied if after a request the person or legal entity files an incomplete statement and does not supply the missing information upon a second request. That penalty shall be in lieu of the penalty provisions of subdivision (a).

(c) The penalty for failure to file a timely statement pursuant to Sections 480, 480.1, and 480.2 for any one transfer may be imposed only one time, even though the assessor may initiate a request as often as he or she deems necessary.

(d) The penalty shall be added to the roll in the same manner as a special assessment and treated, collected, and subject to the same penalties for the delinquency as all other taxes on the roll in which it is entered.

(1) When the transfer to be reported under this section is of a portion of a property or parcel appearing on the roll during the fiscal year in which the 45-day period expires, the current year's taxes shall be prorated so the penalty will be computed on the proportion of property which has transferred.

(2) Any penalty added to the roll pursuant to this section between January 1 and June 30 may be entered either on the unsecured roll or the roll being prepared. After January 1, the penalty may be added to the current roll only with the approval of the tax collector.

(3) If the property is transferred or conveyed to a bona fide purchaser for value or becomes subject to a lien of a bona fide encumbrancer for value after the transfer of ownership resulting in the imposition of the penalty and before the enrollment of the penalty, the penalty shall be entered on the unsecured roll in the name of the transferee whose failure to file the change in ownership statement resulted in the imposition of the penalty.

(e) When a penalty imposed pursuant to this section is entered on the unsecured roll, the tax collector may immediately file a certificate authorized by Section 2191.3.

(f) Notice of any penalty added to either the secured or unsecured roll pursuant to this section shall be mailed by the assessor to the transferee at his or her address contained in any recorded instrument or document evidencing a transfer of an interest in real property or manufactured home or at any address reasonably known to the assessor.

~~SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within~~

~~the meaning of Section 6 of Article XIII B of the California Constitution.~~

SEC. 7. Section 486 is added to the Revenue and Taxation Code, to read:

486. (a) Whenever there occurs any change in the ownership interests, including a leasehold interest, of a legal entity holding an interest in real property in this state, whether by merger, acquisition, private equity buyout, transfer of partnership shares, large stock transfer subject to the filing requirements of the United States Securities and Exchange Commission, or any other means by which a legal entity or person acquires an ownership interest of another legal entity, the person or legal entity acquiring the ownership interests shall report to the board the change in the ownership interests, in the form and manner as specified by the board, within 90 days of the date of the change in the ownership interests.

(b) For purposes of this section, "legal entity" and "ownership interests" have the same meaning as defined in Section 64.

(c) It is the intent of the Legislature to enact legislation to impose a penalty for failure to report changes in ownership interests as required by subdivision (a).

SEC. 8. Section 486.5 is added to the Revenue and Taxation Code, to read:

486.5. (a) Whenever there occurs any transfer between an individual or individuals and a legal entity or between legal entities as described in paragraph (2) of subdivision (a) of Section 62, the legal entity shall report any subsequent changes in the ownership interests of the legal entity to the county assessor, in the form and manner as specified by the county assessor, within 90 days of the date of the change in the ownership interests.

(b) For purposes of this section, "legal entity" and "ownership interests" have the same meanings as defined in Section 64.

(c) It is the intent of the Legislature to enact legislation to impose a penalty for failure to report changes in ownership interests as required by subdivision (a).

SEC. 9. Section 488 is added to the Revenue and Taxation Code, to read:

488. (a) Whenever there occurs a change of an ownership interest in a legal entity holding an interest in real property in this state, a deed shall be recorded with the county recorder by the *owner of the real property, even if the owner of the real property does not change.*

(b) For purposes of this section, "legal entity" and "ownership interest" have the same meanings as defined in Section 64.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

~~SEC. 8.~~

SEC. 11. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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