

Senate Bill No. 507

CHAPTER 708

An act to amend Sections 480, 480.1, 480.2, 482, and 483 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 9, 2011. Filed with
Secretary of State October 9, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 507, DeSaulnier. Property taxation: change in ownership statement.

Existing property tax law requires a transferee of real property or a manufactured home that is locally assessed to file a change in ownership statement no later than 45 days from the date of the change in ownership with the county in which the property or manufactured home is located, and authorizes the change in ownership statement to be filed with the assessor through the United States mail. If a county assessor makes a written request to a transferee to file a change in ownership statement and the transferee fails to do so within 45 days of that request, existing law imposes a penalty on the transferee equal to the greater of either \$100 or 10% of the property taxes due on the property, but not to exceed \$2,500 if the failure was not willful.

This bill would require a change in ownership statement that is filed with the assessor through the United States mail to be deemed filed with the assessor on either the date of postmark affixed by the United States Postal Service, or on the date certified by a bona fide private courier service, on the envelope containing the statement. This bill would increase the \$2,500 cap on the penalty for nonwillful failures to file a change in ownership statement to \$5,000 for a failure to file a change in ownership statement on property that is eligible for the homeowners' property tax exemption or \$20,000 if the property is not eligible for the homeowners' exemption. This bill would extend, from 45 days to 90 days, the time period for filing the change in ownership statement when a change in ownership occurs or if requested to do so by the assessor. This bill would also specify to which addresses the assessor may mail this request or a notice of a penalty. This bill would also require this request to identify the real property or manufactured home for which the statement is required to be filed, and would require the notice of penalty to identify the parcel or parcels for which the penalty is assessed. This bill would also make conforming changes to a related provision.

Existing law requires a corporation, partnership, limited liability company, or other legal entity to file a change in ownership statement within 45 days from the earlier of the date of the change in control or the change in ownership, or the date of a written request by the State Board of Equalization.

Existing law requires a penalty to be imposed if the person or legal entity required to file a change in ownership statement fails to do so within the 45-day period. Existing law authorizes the county board of supervisors to order this penalty abated, if an assessee establishes that the failure to file a change in ownership statement within the 45-day period was due to reasonable cause and not due to willful neglect, and the assessee has filed the change in ownership statement with either the assessor or the State Board of Equalization, as applicable, and an application for abatement of the penalty with the county board of supervisors, as provided.

This bill would extend, from 45 days to 90 days, the time period for filing the change in ownership statement. This bill would authorize the county board of equalization or assessment appeals board, instead of the county board of supervisors, to order the penalty abated, as provided, and would make related changes. This bill would require the assessor to abate the penalty described above, if a written request to file a change in ownership statement, including a request to file a complete change in ownership statement, is mailed by the State Board of Equalization to a person or legal entity based on erroneous information provided by specified persons and the person or legal entity notifies both the State Board of Equalization and the county assessor of the error no later than 60 days after the date on which the person or legal entity is notified of the penalty.

By changing the manner in which county officials process property tax penalties, 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 480 of the Revenue and Taxation Code is amended to read:

480. (a) Whenever there occurs any change in ownership of real property or of a manufactured home that is subject to local property taxation and is assessed by the county assessor, the transferee shall file a signed change in ownership statement in the county where the real property or manufactured home is located, as provided for in subdivision (c). In the case of a change in ownership where the transferee is not locally assessed, no change in ownership statement is required.

(b) The personal representative shall file a change in ownership statement with the county recorder or assessor in each county in which the decedent owned real property at the time of death that is subject to probate proceedings. The statement shall be filed prior to or at the time the inventory and appraisal is filed with the court clerk. In all other cases in which an

interest in real property is transferred by reason of death, including a transfer through the medium of a trust, the change in ownership statement or statements shall be filed by the trustee (if the property was held in trust) or the transferee with the county recorder or assessor in each county in which the decedent owned an interest in real property within 150 days after the date of death.

(c) Except as provided in subdivision (d), the change in ownership statement as required pursuant to subdivision (a) shall be declared to be true under penalty of perjury and shall give that information relative to the real property or manufactured home 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, the parties to the transaction, the date of acquisition, the amount, if any, of the consideration paid for the property, whether paid in money or otherwise, and the terms of the transaction. The change in ownership statement shall not include any question that is not germane to the assessment function. The statement shall contain a notice informing the transferee of the property tax relief available under Section 69.5. 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 transferee acquiring an interest in real property or manufactured home subject to local property taxation, and that is assessed by the county assessor, to file a change in ownership statement with the county recorder or assessor. The change in ownership statement must be filed at the time of recording or, if the transfer is not recorded, within 90 days of the date of the change in ownership, except that where the change in ownership has occurred by reason of death the statement shall be filed within 150 days after the date of death or, if the estate is probated, shall be filed at the time the inventory and appraisal is filed. The failure to file a change in ownership statement within 90 days from the date a written request is mailed by the assessor results in 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 five thousand dollars (\$5,000) if the property is eligible for the homeowners' exemption or twenty thousand dollars (\$20,000) if the property is not eligible for the homeowners' exemption if that failure to file was not willful. 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.”

(d) The change in ownership statement may be attached to or accompany the deed or other document evidencing a change in ownership filed for recording, in which case the notice, declaration under penalty of perjury,

and any information contained in the deed or other transfer document otherwise required by subdivision (c) may be omitted.

(e) If the document evidencing a change in ownership is recorded in the county recorder's office, then the statement shall be filed with the recorder at the time of recordation. However, the recordation of the deed or other document evidencing a change in ownership shall not be denied or delayed because of the failure to file a change of ownership statement, or filing of an incomplete statement, in accordance with this subdivision. If the document evidencing a change in ownership is not recorded or is recorded without the concurrent filing of a change in ownership statement, then the statement shall be filed with the assessor no later than 90 days from the date the change in ownership occurs, except that where the change in ownership has occurred by reason of death the statement shall be filed within 150 days after the date of death or, if the estate is probated, shall be filed at the time the inventory and appraisal is filed.

(f) Whenever a change in ownership statement is filed with the county recorder's office, the recorder shall transmit, as soon as possible, the original statement or a true copy thereof to the assessor along with a copy of every recorded document as required by Section 255.7.

(g) (1) The change in ownership statement may be filed with the assessor through the United States mail, properly addressed with the postage prepaid.

(2) A change in ownership statement that is filed with the assessor, as authorized by paragraph (1), shall be deemed filed on either the date of the postmark affixed by the United States Postal Service containing the statement or on the date certified by a bona fide private courier service on the envelope containing the statement.

(h) 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 those 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.

(i) 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 the assistance be rendered by any person or entity acting for or on behalf of parties to a transfer of real property.

SEC. 2. Section 480.1 of the Revenue and Taxation Code is amended to read:

480.1. (a) Whenever there is a change in control 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 control of the corporation, partnership, limited liability company, or other legal entity with the board at its office in Sacramento within 90 days from the date of the change in control 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 control 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 control 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 control 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 90 days from the date of the change in control 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 of the legal entity has occurred. The failure to file a change in ownership statement within 90 days from the earlier of the date of the change in control 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 10 percent of the taxes applicable to the new base year value reflecting the change in control of the real property owned by the corporation, partnership, limited liability company, or legal entity (or 10 percent of the current year's taxes on that property if no change in control 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 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. 3. 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 90 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 90 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 90 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 Board of Equalization, results in a penalty of 10 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 10 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. 4. Section 482 of the Revenue and Taxation Code is amended to read:

482. (a) (1) If a person or legal entity required to file a statement described in Section 480 fails to do so within 90 days from the date a written request is mailed by the assessor, a penalty of either: (A) one hundred dollars

(\$100), or (B) 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 five thousand dollars (\$5,000) if the property is eligible for the homeowners' exemption or twenty thousand dollars (\$20,000) if the property is not eligible for the homeowners' exemption 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.

(2) The assessor shall mail the written request specified in paragraph (1) to the mailing address of the transferee as provided by subdivision (f).

(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 90 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 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 corporation, partnership, or legal entity, or 10 percent of the current year's taxes on that property if no change in control or change in ownership occurred, shall be added by the county assessor to the assessment made on the roll. The penalty shall apply for failure to file a complete statement with the board 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 that second request to complete the statement. 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 90-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, which shall identify the parcel or parcels for which the penalty is assessed, and the written request to file a statement specified in subdivision (a), which shall identify the real property or manufactured home for which the statement is required to be filed, 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 the address specified for mailing tax information contained in the preliminary change in ownership report. If the transferee has subsequently notified the assessor of a change in address for mailing tax information, the assessor shall mail the notice of any penalty, or the written request to file a statement specified in subdivision (a), to this address. If there is no address specified for mailing tax information on either the recorded instrument, the document evidencing a transfer of an interest in real property or manufactured home, or on the filed preliminary change in ownership report, and the transferee has not provided an address for purposes of mailing tax information, the assessor shall mail the notice of any penalty, or the written request to file a statement specified in subdivision (a), to the transferee at any address reasonably known to the assessor.

SEC. 5. Section 483 of the Revenue and Taxation Code is amended to read:

483. (a) If the assessee establishes to the satisfaction of the county board of 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 equalization or the assessment appeals board may order the penalty abated, provided the assessee has filed with the county board of 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) (1) If a person or legal entity establishes to the satisfaction of the county board of 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 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 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.

(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 State Board of Equalization to a person or legal entity as specified in subdivision (b) of Section 482, 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 assessor shall abate the penalty 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.

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

SEC. 6. If the Commission on State Mandates determines that this act contains 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.