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CHANGES TO PENALTY FOR FAILURE TO TIMELY FILE CA ENTITY CHANGE IN OWNERSHIP STATEMENT

California recently enacted SB 816 to change the penalty provisions for failure to timely file a transfer of property ownership statement with the State Board of Equalization (the "BOE") upon a change in control or change in ownership of a corporation, partnership, limited liability company, or other legal entity. Note that these new rules apply only to late filings of ownership statements upon the change in control or ownership of a legal entity, and not to late filings of ownership statements required to be filed with the county assessor's office upon the recording of a deed transferring real property.

An entity change in ownership statement is required to be filed with the BOE within 45 days from the date of a change in control or ownership of the legal entity. Under current law, a penalty will be imposed if the taxpayer fails to file within 45 days from the date written request is received from the BOE, and the penalty will be extinguished if the statement is filed within 60 days after notification is received.

Pursuant to the amendments under SB 816, effective January 1, 2010, a penalty will instead be imposed upon the failure to file within 45 days from the earlier of the date of the change in control or ownership of the entity, or the date written request is received from the BOE. Additionally, the automatic waiver if the statement is filed within 60 days of the receipt of notice from the BOE will be eliminated. The BOE will still be authorized to waive the penalty upon a showing of reasonable cause.

The penalty is generally equal to 10% of the taxes applicable to the new base year value reflecting the change in control or change in ownership, or 10% of the current year taxes on the property if no change in control or change in ownership of the entity occurs.

As a practical matter, many taxpayers wait to file an entity change of ownership report until notified by the BOE. Given the new penalty provisions, taxpayers should take a more proactive approach to file within 45 days of a change in ownership or change in control of a corporation, partnership, limited liability company, or other legal entity.

Please contact a member of the [Sheppard Mullin tax group](#) for more information.