

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Ammiano Analyst: Matthew Cooling Bill Number: AB 2492  
Related Bills: See Legislative History Telephone: 845-5983 Amended Date: April 8, 2010  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Property Taxes/Change In Ownership

### SUMMARY

This bill would make changes to the provisions requiring the Franchise Tax Board (FTB) to include a question on the state tax return regarding any change in ownership of a business entity.

This bill makes other changes to property tax law. This analysis only discusses the bill to the extent it impacts the FTB.

### SUMMARY OF AMENDMENTS

The April 8, 2010, amendments would add and amend sections of the Revenue and Taxation Code to define which types of business entities must report a change in ownership on the state income tax return.

This is the department's first analysis of the bill.

### PURPOSE OF THE BILL

The Legislature declares that the purpose of this bill is to ensure equality when assessing property values for business real property owners, who often escape full cash value assessment after a change in ownership, and residential real property owners.

### EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative on January 1, 2011.

### POSITION

Pending.

Board Position:	Department Director	Date
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<input type="checkbox"/> SA		
<input type="checkbox"/> N		
<input type="checkbox"/> NA		
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## **ANALYSIS**

### STATE LAW

Current state law requires the FTB to place a question on the tax return for certain entities to indicate if there has been any change of ownership of the entity for purposes of determining a change in the ownership of the taxpayer's real property during the tax year. This requirement applies for partnerships, banks, and corporations. If an entity answers "yes" to the question, the FTB sends the names and addresses of the entity to the Board of Equalization (BOE). The FTB is also required to furnish the name and addresses of the stock, partnership, or limited liability company ownership interest transferees to the BOE.

### THIS BILL

As it impacts the FTB, this bill would require the franchise or income tax return of a legal entity or publicly traded company to include a revised question regarding any change in ownership. This bill would require the question to be substantially similar to the following:

"If the legal entity or publicly traded company owns or leases real property in California, have any ownership interests in the legal entity or publicly traded company been transferred since the last change in ownership of the real property directly or indirectly controlled by the legal entity or corporation?"

This bill would define the following terms:

- A "legal entity" is a corporation, a partnership, a limited liability company, or other legal entity,
- A "publicly traded company" means the following:
  - A corporation or entity subject to the filing requirements of the US Securities and Exchange Commission, and
  - The corporation owns, either directly or indirectly, an interest in real property in California,
  - An "ownership interest" means corporate voting stock, partnership capital and profit interest, limited liability company member interests, and any other ownership in legal entities and publically traded companies,
- "Directly owned" means the legal entity or publically traded company has ownership interest in real property,
- "Indirectly owned" means the legal entity has ownership interest in a legal entity or publically traded company that has an interest in real property.

## IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

This bill includes "other legal entity" as part of the definition for "legal entity," which could mean entities such as estates, trusts, and exempt organizations. Because estates, trusts, and exempt organizations do not have owners that retain ownership interest in assets, including real property, they are precluded from having to respond to the change in ownership interest question. As such, FTB would be required to report these entities to the BOE for failure to respond, which could lead to disputes with taxpayers. It is recommended that the author actually list the entities required to answer the question regarding change in ownership interest.

## **LEGISLATIVE HISTORY**

AB 1029 (Horton, 2005/2006) would have required the FTB to include a general question regarding change in ownership or control of entities that own real property in California in lieu of the specific questions mandated under current law. Governor Arnold Schwarzenegger vetoed this bill on September 29, 2006. See appendix A for the veto message.

SB 17 (Escutia, 2005/2006) and SB 17 (Escutia, 2003/2004) would have required the FTB to furnish to the BOE names and addresses of entities that either fail to respond or respond affirmatively to the real property change of ownership question on their income or franchise tax return. SB 17 (2005/2006) failed to pass out of the house of origin before the Constitutional deadline. SB 17(2003/2004) failed to pass out of the Assembly.

AB 2777 (Stats. 1980, Ch. 1349) added the provision requiring FTB to include the change in ownership question on the forms for applicable entities.

## **OTHER STATES' INFORMATION**

The states surveyed include *Florida, Illinois, Michigan, and Minnesota*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

*Massachusetts* and *Minnesota* require taxpayers to file a business activity questionnaire that includes questions about changing ownership interests during the tax year. *New York* corporations must report a change in ownership during the three years prior to filing a corporate tax return.

## **FISCAL IMPACT**

This bill would not significantly impact the department's costs.

## **ECONOMIC IMPACT**

This bill would not impact the state's income tax revenue.

## **LEGISLATIVE STAFF CONTACT**

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## Appendix A

BILL NUMBER: AB 1029  
VETOED            DATE: 09/29/2006

To the Members of the California State Assembly:

I am returning Assembly Bill 1029 without my signature.

Current law requires property to be reassessed at full market value when there is a change of ownership. When property is owned by a legal entity such as a corporation or partnership, a change of ownership occurs when one person or legal entity acquires more than 50 percent of the ownership interest.

This bill would allow a county assessor to increase property taxes on a piece of property if the assessor has information that a change in ownership has occurred but a change own ownership statement has not been filed. While I support allowing county assessors to collect the appropriate tax on property that has changed owners, it is important to ensure that requests are sent to and received by the appropriate parties in order to establish a change of ownership has actually occurred before assessing additional taxes.

I encourage the proponents of this bill to work with property owners to revise notification procedures to ensure proper notification is delivered to all impacted parties before increasing taxes.

Sincerely,

Arnold Schwarzenegger