



AB 2492 – Change of Ownership: Loophole closure **(As Amended, 5/03/10)**

PURPOSE

This proposal is designed to close the loopholes in existing law, which defines “change of ownership” for commercial property, in those cases where changes of ownership are at 100%, but reassessment is avoided.

BACKGROUND

Current law requires that commercial properties be taxed on their full market value if a “change of ownership” occurs. “A change of ownership” triggers reassessment of property for property tax purposes. However, current law says that a “change of ownership” does not occur unless one owner acquires more than 50% of a property. Unfortunately, loopholes in existing law have not triggered reassessment, in some cases, even if 100% of property has changed hands.

Commercial property is held in many complex ways – limited liability corporations, limited partnerships, real estate investment trusts, family trusts, publicly traded corporations, etc. It is often difficult to identify a “change of ownership” under current law, and very easy to avoid a “change of ownership” even when a sale occurs that should trigger a reassessment.

In 2008, as the nation became consumed by the worst economic recession in history – caused in no small part by the collapse of the mortgage lending industry – and as “too big to fail” businesses clearly began to fail, many of the smaller lending institutions were acquired by the larger national and international financial institutions. However, it is still unclear if any of

the California assets acquired in these mergers have been reassessed even though it is reasonable to assume that 100% of ownership has changed hands. As reported by the California Tax Reform Association in a 2010 report, reviews of private equity buyouts and bank mergers point to several examples where it has been discovered that huge “changes of ownership” in major properties occurred which have gone without reassessment. For example:

- In 2008 Wells Fargo & Company purchased Wachovia Corporation for a reported \$15.1 billion in an all-stock deal, but to date reports suggest reassessment of the California properties have yet to be assessed, and
- in a 2006 reported \$6.6 billion buyout of Toys “R” Us, Inc.; Bain Capital Partners, Kohlberg, Kravis, Roberts & Company, and Vornado Realty Trust acquired worldwide operations of Toys “R” Us and Babies “R” Us. However with each of the three investors gaining equal stakes of ownership in the buyout, California properties have failed to be properly reassessed.

The state’s current system for assessing and taxing commercial and industrial property is riddled with loopholes. The current system provides property owners with innumerable ways to structure change of ownership transactions to avoid paying higher taxes. The system allows billions of dollars of valuable business property to be vastly under assessed, creates great differences in taxes paid among

property owners, resulting in inadequate funding of local governments, schools and infrastructure projects.

EXISTING LAW

Article XIII of the state Constitution was added in 1978 when voters approved Proposition 13 which:

- Limits property tax rate to 1% of full market value.
- **Caps the increase in property value at 2% with reassessment at full market value only upon “change of ownership”.**
- Rolled back property values for tax purposes to 1975-76 levels.
- Required a two-thirds vote to increase “special” taxes.
- Required any increase in state taxes to be approved by 2/3 of the state legislature.
- Transferred the authority for allocating property tax revenue from local government to the state.
-

Under section 64 of the Revenue and Taxation code subsection (d) 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 co-owners 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.**

SUMMARY

AB 2492 begins the process of major property tax reform by closing the most obvious and egregious loopholes in property tax law by requiring that where 100% of a company changes ownership, from bank mergers and private equity buyouts, the property held by that company and its subsidiaries and affiliates must be reassessed, no matter how many purchasers take ownership of the property.

SUPPORT

- California Tax Reform Association (**Sponsor**)
- Alliance of Californians for Community Empowerment (ACCE) (**Sponsor**)
- American Federation of State, County, and Municipal Employees
- California Commission on the Status of Women
- Californians for Justice Education Fund
- California Labor Federation
- California School Employees Association
- Health and Human Services Network
- Jericho CA
- Parent Leadership Action Network (PLAN)
- Public Advocates Incorporated
- San Diego and Imperial Counties Labor Council

CONTACTS

Erric S. Garris
Office of the Honorable Tom Ammiano
erric.garris@asm.ca.gov
(916) 319-2013

Lenny Goldberg
California Tax Reform Association
lga@cal.net
(916) 443-4300

Ronald Coleman
Alliance of California Communities for Empowerment
rcoleman@calorganize.org
916-288-8828