

## HOW TO SELL YOUR REAL PROPERTY AND NOT KNOW IT



### WATCH OUT FOR REASSESSMENT OF REAL PROPERTY WHEN SELLING YOUR COMPANY STOCK!!!

#### Summary:

*A common aspect of the sale of the business is the sale of all of its assets to the new owner. If we are dealing with a limited liability entity which has its own identity, such as a corporation, and the new owner is buying the stock, then the title to the real property remains in the name of the company and, legally speaking, there has been no change of owner of the real property...the same corporation owns it both before and after the sale....right?*

*Legally yes...Tax wise no! It will be considered a sale of the real property to a new owner with resultant increase in assessed value if MORE THAN 50% ownership of the corporation is sold.*

#### FACT SITUATION:

Assume that you are the owner of the majority stock in XYZ Company which owns two buildings bought many years ago whose value has tripled. In California, Proposition 13 has limited the ability of the State to reassess the value of the property for tax purposes and you have enjoyed this tax break in all your business dealings for years and it shows in your bottom line.

An out of state entity comes in and wants to buy controlling interest in your company. What they may not realize is that your attractive bottom line, which they are using to value your company, should be adjusted for the increased property tax likely to occur when the stock is transferred. *Yes, the same corporation owns the building...but the taxing authorities do not see it that way.*

#### QUESTION:

*Will the change in ownership of the corporation trigger a reassessment of the real property owned by the corporation?*

#### SHORT ANSWER:

**Yes**, under existing property tax law, real property is reassessed to its current fair market value whenever there is a "change in ownership." (Article XIIIIA, Sec. 2; Revenue and Taxation Code Sections 60-69.7).

California Revenue and Taxation Code Section 64 sets forth the change in ownership provisions related to the purchase or transfer of ownership interest in legal entities that own real property. Generally, when real property is owned by a legal entity, the purchase or transfer of ownership interest in that legal entity does *not* trigger a change in the ownership of the property.



But an exception to this general rule is when there is a "**change in control**" of the legal entity which is defined in R&T Code 64 (c) (1) as when a person or entity **acquires more than 50 percent** of the ownership interests in the legal entity. The relevant

R&T Code section 64 (c) (1) is quoted below:

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 per cent of the voting stock of any corporation**, 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 of 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.**

**HOW DO THEY KNOW IF THE NAME ON THE TITLE DOES NOT ALTER?**

***BECAUSE YOU TELL THEM!***

Any person or legal entity *acquiring* ownership in any corporation, partnership or legal entity acquiring ownership in any corporation

or other legal entity owning real estate in California subject to local property taxation *is required to complete a change of ownership statement with the State Board of Equalization within 45 days of the transaction.* Failure to do so can result in 10% penalty of the taxes assessed on the new base year value or, in the event that the transaction does not represent a change in control, the penalty is based on 10% of the current assessed value.

**LESSONS:**

- 1. Factor in increased taxes if a sale is made...both in terms of future profitability and value of the business.**
- 2. Consider NOT putting real property into the corporation...own it personally and lease space to the company instead.**
- 3. Remember IRS is not the only taxing entity...State and Local Taxes can be even more brutal...plan for ALL taxes in any business deal!**

