PTA PROPERTY TAX UPDATE
Property Tax Assistance Co., Inc. ❖ 16600 Woodruff Ave., Bellflower, CA 90706 ❖ 562-920-1864 ❖ www.property-taxes.com
SPRING 2010

Stricter Penalties for Failure to Report "change in ownership"

Albert Zamarripa. Vice President

Senate Bill (SB) 816 was signed into law on October 11, 2009 by Governor Arnold Schwarzenegger, which in essence provides a stricter penalty for legal entities that do not report a change of ownership to the SBE (State Board of Equalization) within 45 days. A change in ownership is defined as a transfer of the present interest in real property, including the beneficial use of the property, the value of which is substantially equal to the value of fee interest.

Within corporations, transfers of interest within the entity itself do not cause a change of ownership, however if more than 50% of the interest or "control" is transferred, then this will cause a change of ownership. For partnerships or limited liability corporations (LLC), "control" is typically designated by more than 50% interest in both capital and profit in the company.

Change of ownership is a critical element of taxation since the Assessor's office is barred from reassessing property, and/or altering the established base year value of the underlying realty, except under certain events. In property taxation, there are two common events the will trigger a reassessment of real property, the first being "change in ownership" and the second being "new construction". While new construction will cause value of new construction being added to the market value of preexisting property, a change in ownership means that a new base year value will be derived for the entire property. An adjustment to the base year value may have inherent consequences on property owners, of paying higher taxes for the foreseeable future.

It is important to note the step transaction doctrine applies in the property tax arena. In essence, where an entity engages in a series of independent transactions which can be construed by an Assessor to be geared towards a final particular result, the Assessor can treat the series of steps as a single transaction causing a change of ownership, Penner v. County of Santa Barbara (1995) 37 Cal.App.4th 1672.

Before SB 816 was passed, a corporation had 45 days to file the change of ownership statement, commonly referred as a "PCOR" statement. Under prior law, a penalty for failure to file a PCOR was not issued unless the SBE contacted the entity in writing and thereafter the corporation had 60 days to respond. Under the new law imposed by SB 816, a corporation will be imposed a 10% penalty for failure to file a PCOR within 45 days, with or without a written request. The 10% penalty applies to the additional taxes due (supplemental), upon reassessment. Entities can apply with the County Board of Supervisors to have the penalty abated and must be done within 60 days after mailing of the notice.

It is important for entities to plan any transactions that may trigger reassessment at the County level. Although a majority of the transactions are easily identified as a change of ownership, many others may require strategic planning to avoid a reassessment. Additionally, in instances where the change of ownership is clearly indentified, entities should ensure to file their PCOR statements in a timely manner in order to avoid being assessed a 10% penalty.

BUSINESS INVENTORY EXEMPTIONS

Kris Chacko, Esq., Sr. Tax Consultant

As a general rule, all forms of tangible personal property are taxable in California, unless specifically exempt from property tax. (Cal. Const., art. XIII § 4, subd. (b)). Revenue & Taxation Code (R&T) §219 exempts "business inventories" from taxation. California Code of Regulations Title 18 (CCR) §133 explains the tax exemption further. "Business Inventories" are defined as "including goods intended for sale or lease in the ordinary course of business". "Goods intended for sale or lease" means property acquired, manufactured, produced, processed, raised or grown which is already the subject of a contract of sale or which is held and openly offered for sale or lease or will be so held and offered for sale or lease at the time it becomes a marketable product. Property which is ready for sale or lease must be displayed, advertised or otherwise brought to the attention of the potential purchasers or lessees by means normally employed by vendors or lessors of the product" (CCR. 133, subd. (a)(1)(B)).

Recently, we successfully represented more than a few taxpayers who, in the ordinary course of business, leased equipment to other companies that were engaged in manufacturing, production, or provided some form of service. These taxpayers had been in business for a considerably long period of time, some for more than 20 years. During those years these companies were denied the inventory exemption by the various Assessors' Offices responsible for their respective assessments. These exemptions were denied by the Assessor based on an incorrect assumption of fact or law. Exemptions are generally strictly construed against the taxpayer. In order to get the exemption, the burden is on the taxpayer to meet every element of the inventory classification.

In almost every instance, these companies went through mandatory audits by the Assessor's Office. Audits will generally investigate whether the taxpayer is entitled to the use of any of the various exemptions allowed by the legislature. In each of these respective audits, the Assessor justified their denial of these exemptions. The denials were usually based on perceived factual discrepancies between the conduct of the taxpayer or in other cases the nature of the taxpayer's dealings with other companies.

The inventory exemption is fact sensitive. Any event, whether minor or major, could determine whether the exemption is granted or withheld. The inventory exemption could also be hampered by the County's understanding of the law. History has shown, based on the experiences of the taxpayers mentioned above, that the Assessor's Office denied the exemption erroneously. However, the taxpayer does have recourse if facts indicate any likelihood, that the equipment should be classified as inventory.

CCR §324 grants the Assessment Appeals Board (Board) jurisdiction to determine the classification of property that is the subject of the hearing. Taxpayers, by filing a timely appeal, could request that the Board properly classify their personal property as Business Inventory in accordance with R&T §129. A favorable outcome could result in substantial tax savings. As an example, a couple of the taxpayers whose appeals have already been resolved will reduce their future annual tax liability by about $250,000. These savings are in addition to substantial refunds generated from the appeals for prior years.

If there is any inclination that your equipment should be classified as inventory or if you require a review to determine the proper classification of your equipment, we at Property Tax Assistance stand ready to provide such a service.

Quotes

Don't judge each day by the harvest you reap but by the seeds that you plant.
—Robert Louis Stevenson

I resolved to stop accumulating and begin the infinitely more serious and difficult task of wise distribution.
—Andrew Carnegie

Life expectancy would grow by leaps and bounds if green vegetables smelled as good as bacon.
—Doug Larson

If there exists no possibility of failure, then victory is meaningless.
—Robert H. Schuller

There are no secrets to success. It is the result of preparation, hard work, and learning from failure.
—Colin Powell

Hard work spotlights the character of people: Some turn up their sleeves, some turn up their noses, and some don't turn up at all.
—Sam Ewing

Only those who dare to fail greatly can ever achieve greatly.
—Robert F. Kennedy

When I chased after money, I never had enough. When I got my life on purpose and focused on giving of myself and everything that arrived into my life, then I was prosperous.
—Wayne Dyer

Health is not valued till sickness comes.
—Dr. Thomas Fuller

How Does Cost Segregation Save You Money?

If you are undertaking construction, renovation or purchase of a building, you may be eligible for substantial state and federal tax savings.

Certain assets related to the project may qualify for accelerated depreciation, meaning you can take larger tax deductions over a shorter period. The benefits of larger tax deductions include increased cash flow and lower cost of capital in the first few years following a project or purchase.

Due to their value as a tax-planning tool, cost segregations studies are a smart investment for most companies that meet the qualifying criteria. Studies typically pay for themselves seven to 10 times over the life of the asset.

A cost segregation study can identify building costs that would typically be depreciated over a 39-year period and reclassify them to permit a shorter, accelerated method of depreciation.

Costs for nonstructural elements, such as carpet, wall coverings and accent lighting and exterior site improvements, such as sidewalks and landscaping, can often be depreciated over five, seven, or fifteen years.

Cost segregation is not a risky or aggressive tax scheme. Court rulings dating back to the 1960s support the practice of segregating costs for tax depreciation on buildings.

Cost segregation studies emerged in 1987 when Congress extended the depreciation period for commercial property from 19 to 31.5 years. This created an incentive to classify building assets as personal property. In 1993, the period was extended to 39 years. The much added incentive also added the opportunity to look back to those prior years before 2009 and catch up previously missed deductions and be able to use them on current year's tax returns, without the need to amend any tax returns. (Revenue Procedure 2008-52)

In 1997 the U.S. Tax Court ruled in Hospital Corporation of America (109 TC 21) that the practice of segregating building costs for tax purposes was allowable. As a result, cost segregation has become an accepted - although still somewhat under utilized - tax-planning tool.

The IRS recently finalized its Cost Segregation Audit Techniques Guide, which lays out comprehensive audit technique guidelines and explains what constitutes a "quality" cost segregation engagement.

The guide says cost estimating techniques may be required to "segregate" or "allocate" costs to individual components of property, such as land, land improvements, buildings, equipment, furniture and fixtures. This type of analysis is generally called a "cost segregation study," "cost segregation analysis" or "cost allocation study."

More taxpayers are submitting "either original tax returns or claims for refund with depreciation deductions based on cost segregation studies," according to the guide.

Sample Industrial Facility:

An Industrial Facility with a cost basis of $5 million, placed in service in 2009 could receive additional depreciation in first four years of approximately $645,000, resulting in federal and state taxes deferred of $278,000 (using combined 43% tax rate) These are benefits in addition to what they would have received without a cost segregation study.

Sample Multifamily Apartments:

An Apartment Complex with a cost basis of $20 million, placed in service in 2002 could receive additional depreciation in subsequent four years of approximately $2,300,000. Even though the complex was placed in service in 2002, there is no need to amend prior year taxes as all prior benefits all caught up and taken all against current income.

Call 562-920-1864 for more information

TOOTING OUR HORN!

Although this is an informational newsletter, we would like to take the opportunity to brag about a sampling of our successes, from various industries, in the last quarter. These are a few examples of the refunds that our clients have received from the county, due to our work.

Commercial Camera Rentals	*$307,017.00*
Commercial Printing	*$36,627.00*
Data Center	*$1,925,195.63*
Financial Company	*$90,000.*
Food Manufacturer	*$1,278,586.00*
Metal Manufacturer	*$84,247.23*
Packaging manufacturer	*$20,792.23*
Plastics Manufacturer	*$94,365.18*
Real Estate	*$34,218.42*
Roofing Company	*$91,777.90*
Semiconductor	*$108,713.27*
Telephone Communications	*$501,499.24*

TaxTidbits

Taxpayers win appeals

In California taxpayers won 81.5 percent of assessment appeals heard in 2008-2009. However, taxpayers did not fare so well in the counties where appeals are heard by the county board of supervisors, rather than an assessment appeals board.

Blast From the Past

Less than five years ago, California had a balanced budget that was passed relatively on time. The 2005-06 state budget was in the black, with $91.6 billion in general fund expenditures and $93.4 billion in general fund revenues. It contained no new taxes and was approved on July 7. The 2005-06 budget also funded the second fewest number of state employees (317,000) than any budget of the decade (second to 313,000 in 2004-05).

Cal-Taxletter, February 11, 2010

Mother's Day: a long tradition of love

The second Sunday in May was officially proclaimed “Mother's Day” by President Woodrow Wilson in 1914. But it had a long history before then.

The ancient Greeks held a festival for Cybele, the mythical mother of many Greek gods, during the spring. The Romans dedicated a holiday called Matronalia to the goddess Juno, mother of Mars, Minerva, and Vulcan. Gifts to one's real mother were common that day.

“Mothering Sunday” in Europe and the British Isles honored mothers and motherhood on a specific Sunday. The Catholic liturgical calendar marked the fourth Sunday of Lent to honor the Virgin Mary and “mother church,” and families offered token gifts and took charge of traditionally female tasks such as cooking and cleaning for the day.

In the United States, Anna Reeves Jarvis organized Mother's Work Day in the 19th century. Her goal was to heighten awareness of local sanitation issues in her home state of West Virginia. Julia Ward Howe, author of the lyrics to “The Battle Hymn of the Republic” promoted a “Mother's Day for Peace” in 1872.

In 1908, Anna Marie Jarvis (daughter of Anna Reeves Jarvis) organized a celebration of motherhood at her church in Grafton, W.Va.; more than 400 children and their mothers participated.

After that, Jarvis proposed a national day of recognition for mothers. West Virginia recognized Mother's Day first, in 1912. President Wilson's proclamation came in 1914.

Today Mother's Day is a big business. Greeting cards, flowers, perfume, jewelry and dining out are all a big part of how we express appreciation to the women who raised us.

A Brief History of Honoring Dad

The "Mother" of Father's Day was Sonora Smart Dodd, according to many historians. The daughter of a widowed Civil War veteran who had raised her on his own, Dodd came up with the idea when listening to a Mother's Day sermon in 1909. She held her own special tribute for her father on June 19, 1910, in Spokane, Wash., and began a campaign for an official celebration thereafter.

Initially the idea of Father's Day was met with skepticism. But in 1919, President Calvin Coolidge expressed support for the holiday, and in 1926 a National Father's Day Committee was formed in New York City to join the campaign. In 1966 President Lyndon Johnson signed a proclamation designating the third Sunday in June as Father's Day, but it wasn't until 1972 that President Richard Nixon officially recognized it as a national holiday.

The official flower of Father's Day is the rose: red for fathers who are still living, and white for fathers who have passed away.

PTA

Volume 15, Issue 2

David L. Gangloff Jr., Esq. President
Property Tax Assistance Co., Inc.
16600 Woodruff Ave.
Bellflower, CA 90706

www.property-taxes.com

Bellflower, CA (Corporate Headquarters)
Property Tax Assistance Co., Inc.
16600 Woodruff Ave.
Bellflower, CA 90706
Phone 562-920-1864 Fax 562-920-5775
PTA@property-taxes.com

Bay Area Office
Property Tax Assistance Co., Inc.
1981 N. Broadway, Suite C342
Walnut Creek, CA 94546
Phone 925-942-1004 Fax 925-942-0369

Editor: Lisa Henry
LHenry@property-taxes.com
562-920-1864

Property Tax Update

Tax Humor

Ambition in America is still rewarded . . . with high taxes.

America is the land of opportunity. Everybody can become a taxpayer.

It's hard to believe America was founded to avoid high taxation.

Americans are now in a daze from intoxication.

There was a time when $200.00 was the down-payment on a car; now it's the sales tax.

The tax collectors take up so much of your earnings to balance the budget that you just can't budget the balance.