

# California Re-defining “Change of Ownership” to Allow for Real Property Reassessment

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California’s Proposition 13 in general allows for the reassessment of the value of real estate for the property tax purposes only upon a change of ownership or additional construction.

Under Section 64 of the California Revenue and Taxation Code, (“CRT”) the transfer of ownership interests in an entity does not constitute a change of ownership in real property owned by an entity unless a person or other entity obtains ownership or control of more than 50% of the voting stock or ownership interests in the entity (CRT Section 64(c)). The effect of this provision is that any acquisition of a controlling interest in an entity results in a deemed change of ownership of the real property and allows for its reassessment. For example, if a person owns 49% of an entity and acquires an additional 3% there is a change of ownership; or if a person owns no interest in the entity and acquires 51% there is a change of ownership.

However, the existing law would allow a sale of 100% of the ownership interest in an entity without a reassessment. For example, a 100% owner of an entity could sell 49% to each of two unrelated people and 2% to a third person and there would be no change in control or any combination thereof and no reassessment can occur. A recent California appellate case confirmed this interpretation in setting aside the Los Angeles County Assessor’s attempt to reassess the Fairmont Miramar Hotel in 2006 following a transfer of ownership interests in the ownership entity but where no one party owned 50% or more of the ownership interests following the transfer.

Because, as indicated, the transfer of more than a majority of the ownership interests in an entity can be structured to avoid reassessment a bill has now passed the State Assembly (AB 2372) that would amend the law to cover, in addition to a change of control under existing law, a change of ownership of 90% or more in an entity that occurs in a single transaction.

The logic of the Bill is such that it passed the Assembly with more than the necessary two-thirds majority and seems likely to pass the Senate, notwithstanding the need for a two thirds majority in that forum.

We expect this legislation to become law.