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California Real Property Tax: Assembly Bill 2492 Would Make Radical Changes To The Manner In Which California Real Property Owned By Entities Is Assessed And Taxed

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CCN Client Alert

Assembly Bill 2492 (“**AB 2492**”), introduced on February 19, 2010, proposes a major overhaul to the change of ownership rules for legal entities that own California real property.

Under current California real property tax law and rules, real property owned by an entity such as a partnership, a limited liability company or a corporation is generally not reassessed when ownership interests in the entity are transferred. However, the real property owned by an entity is reassessed when some person or entity acquires “control” of the entity. Acquiring “control” is defined for these purposes as beginning with a 50% or lower economic interest in an entity and ending up with a greater than 50% economic interest in the entity. The real property is also reassessed under certain limited circumstances when there has been a cumulative transfer of more than 50% of the interests in the entity by so-called original co-owners, even though no person or entity ends up with “control” of the entity.

If enacted, AB 2492 would replace the paradigm just described with a look-through rule. Under AB 2492, most transfers of ownership interests in non-publicly-traded legal entities would trigger reassessments: reassessed would be the portion of the California real property owned by the entity that is equal to the proportional ownership interest in the legal entity that was transferred. So, in a simple real estate LLC, a transfer of a 10% membership interest would cause a reassessment of 10% of each parcel of California real property

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that is owned by the LLC. In addition, once these transfers cumulate at more than 50%, 100% (and not just the cumulative percent transferred) of the California real property of the LLC would be reassessed.

We expect that the number of additional assessment events will increase dramatically if AB 2492 were to become law. Also, each parcel of real property owned by an entity could have many different base year values, with the different base year values being driven by the different values of the real property at the different times that interests in the entity were transferred. It is not clear how state and local governments would administer the change, if enacted, and track the differing base years. The complexity of the new rules suggests there may be an added compliance burden on affected entities. Also, determining how the economic burden of the total property tax bill should be shared by partners or members or transferees who were admitted into the entity at different times might be a challenge and certainly will be a matter to be negotiated by the parties.

AB 2492 would also change the law for real property that is owned by a publicly-traded entity. Although publicly-traded entities would not be subject to the full impact of the look-through rule that applies to non-publicly-traded entities, real property owned by a publicly-traded entity will be reassessed once there has been a cumulative transfer of more than 50% of the ownership interests in the entity. Furthermore, AB 2492 would establish a rebuttable presumption that, as of January 1, 2011, and on January 1 of each third fiscal year thereafter, all of the California real property owned by the publicly-traded entity underwent a change in ownership. AB 2492 would implement a system to administer this presumption and to permit its rebuttal by the property owner.

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