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SB 1588 - New Tax Reporting Requirement for Real Estate Transactions

As of June 17, 2008, owners, whether individual or entity, of non-homestead property are required to notify the local property appraiser of any change of ownership or control over the real property.

This new notification requirement is a result of the new assessment rules enacted by Amendment 1 to the Florida Constitution as approved by Florida voters in January of 2008. Under the new Article VII, Section 4 of the Florida Constitution, there is a 10% cap on increases to assessed value of non-homestead property each year. However, a new assessment not subject to the 10% cap may be made upon any change of ownership or control, including any change of ownership of a legal entity that owns real property.

To codify this new amendment, as well as to define “change of ownership or control” as directed by the language in Article VII, the Legislature passed Senate Bill 1588, which is effective as of June 17, 2008. Under this new law, in conjunction with the requirement that non-homestead property be reassessed for property tax purposes whenever there is a change in ownership of the real property, including a change of ownership of a legal entity owning real property, the property owner is required to notify the relevant property appraiser about the change in control. Penalties for failing to disclose the change in control could be as high as repayment of the taxes avoided plus a 50 percent penalty and 15 percent interest.

The new law defines change in ownership or control as any sale, foreclosure or transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control or of more than 50 percent of the ownership of the legal entity that owned the real property when it was most recently assessed at just value.

There are numerous unanswered questions with regard to this notification requirement. Although the law requires that notification be made promptly, it does not define an exact time limit for making the notification. There is no indication whether change in indirect ownership of legal entities (e.g. change in control of entity partners of a partnership holding real property) triggers the notification requirement. There is ambiguity as to what period of time to look-back over for determining whether a 50 percent change in ownership has occurred.

We recommend that our clients wait to see what form the Department of Revenue will release to make the required notification. Meanwhile, clients should keep records of all transfers of ownership in order to notify the relevant property appraisers once the Department of Revenue has issued the appropriate form.



e-newsletter

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