California State Board of Equalization,
Legislative Division

LEGISLATIVE BULLETIN

State Capitol Building (from the East) c.1945
Photo courtesy of California State Archives

PROPERTY TAX LEGISLATION
2004

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Assembly Bill 2558 (Plescia) Chapter 640

Revenue Allocation – Special Exception

Effective January 1, 2005. Amends Section 100 of the Revenue and Taxation Code.

BILL SUMMARY

This bill would change the allocation of property tax revenues derived from a newly constructed public utility property from the countywide method to the specific tax rate area where the property is located.

Sponsor: Sempra & City of Escondido

LAW PRIOR TO AMENDMENT

Incremental growth in property tax revenues from state assessed property occurring after 1987 is shared on a "countywide" basis. The increase in property tax revenues could result from an increase in property values, or from new construction or new acquisitions of property. Post-1987 incremental growth revenues are distributed to nearly all governmental agencies and school entities in the county in proportion to each entity's share of the county's total ad valorem property tax revenues in the prior year.

Existing law provides a few exceptions to this revenue allocation procedure:

- For three specific state assessed properties newly constructed after 1987, the revenue from the property is allocated only to the governmental agencies and school entities in the tax rate area where the property is sited – instead of being shared with all governmental agencies and school entities located in the county as incremental growth. (Only two of the three properties were subsequently constructed.) *Revenue and Code §100(i), (j) and (k)*.

- Tax revenue from state assessed electrical generation facilities that are not owned by a public utility (i.e., "merchant plants") are allocated only to those governmental agencies and school entities in the tax rate area where the facility is located. *Revenue and Taxation Code §100.9*

AMENDMENT

This bill amends subdivision (k) of Section 100 to require that the county auditor allocate property tax revenues from a newly constructed public utility owned property to those governmental agencies and school entities in the tax rate area where the property is located, as specified. These provisions apply only if a city or county (1) adopts a resolution stating that the property is subject to a development plan or agreement and (2) notifies the county auditor and the Board of Equalization prior to January 1, 2006.

This bill affects the revenue allocation of a merchant power plant currently under construction in the City of Escondido that will be sold to a public utility once complete.

With respect to the functions of the Board of Equalization, this bill requires that after the Board annually determines the value of all of the property owned by the public utility, the portion of value that is allocated to the power plant be assigned to the specific tax rate area where the property is located, rather than assigning it to the countywide tax rate area.

IN GENERAL

Property tax revenues derived from state assessed property differ from that of locally assessed property:

Locally Assessed. Generally, property tax revenues derived from locally assessed property accrue only to those governmental agencies and school entities with jurisdiction in the tax rate area where the property is located (i.e., "situs based").

State Assessed. For state assessed property, a certain amount of the incremental growth in revenues after 1987 is placed in a pool and shared with nearly all governmental agencies in a county according to a statutory formula. Specifically,

- Each local agency has a tax base (hereafter called the "unitary base") for any jurisdiction which had state assessed property sited within its boundaries in the 1987-88 fiscal year.
- Thereafter, the formula annually increases each local agency's "unitary base" by two percent (provided revenues are sufficient).
- If there is any property tax revenue remaining after each local agency has been distributed its "unitary base" plus two percent, then this surplus revenue, referred to as "incremental growth," is distributed to all agencies in the county. Agencies with unitary bases also receive a share of the incremental growth.
- "Incremental growth" revenues are shared with all jurisdictions in the county (i.e., county-wide distribution) in proportion to the entity's share of total property tax revenues.

Legislation has been enacted to establish situs-based revenue allocations for certain stand-alone state assessed properties that were newly constructed after the county-wide system was established. Hence, the property tax revenues derived from these proposed projects (only two of the three projects were subsequently constructed) would go to the jurisdictions in the tax rate area where the project was to be sited rather than being shared with all jurisdictions located in the county as "incremental growth." In addition, there is a fourth exception which applies to a special category of property: state assessed electrical generation facilities that are not owned by a public utility i.e., "merchant plants."

Revenue allocation procedures for state and local property are summarized in the following table:

Property Type	Revenue Allocation	Revenue and Taxation Code	Legislation
Locally Assessed Property	Situs Based	Section 96 et. seq.	AB 8 (1979)
State Assessed Property – Special exceptions noted below	Pre-1987 values: Situs Based Incremental Growth: Countywide	Section 100	AB 2890 (1986)
Merchant Power Plants Location: Statewide	Situs Based	Section 100.9	AB 81 (2002)
Pacific Bell (Computer Center) Location: City of Fairfield	Situs Based	Section 100(i)	AB 454 (1987)
PG&E (Education and Training Center) Location: City of Livermore	Situs Based	Section 100(j)	SB 53 (1991)
SDG&E (Power Plant -Never Constructed) Local: City of Chula Vista	Situs Based	Section 100(k)	AB 1108 (1993)

The historical rationale for the countywide system. The countywide system was established to ease the administrative burdens on state assessees, the state, and counties. Detailed record keeping was necessary to report property holdings, allocate property value, and allocate property tax revenue by the fine detail of the tax rate area. According to a news release on 1986's AB 2890 (Hannigan), the bill that created the county-wide system, the Assembly Revenue and Taxation Committee had held an interim hearing in the fall of 1985 on property tax issues resulting in a number of suggested reforms subsequently included in AB 2890. The press release summarizes the various reforms and with respect to the new revenue allocation system, it describes the proposed new system as follows:

> **Distribute the value of state assessed property to counties on a county-wide basis, and distribute the revenue to local jurisdictions in proportion to their local assessed value.**
>
> Rationale: This will eliminate a very burdensome administrative job for the Board of Equalization and for taxpayers – the placing of state assessed value into tax rate areas. No jurisdiction will lose any money because the AB 8 distribution formula (and the specific provisions of this legislation) will guarantee all taxing jurisdictions that they will get the same amount of

> revenue that they got in the prior year from state assessees plus an amount for growth.

In 1987, an Assembly Revenue and Taxation Committee analysis on a related measure, AB 454, provided additional insight into the rationale for establishing the county-wide system. That analysis notes:

> In AB 2890 (Hannigan) of 1986, a formula distribution of state assessed unitary values was adopted. The justification for this provision were (1) that state assessed unitary property is assessed on a company basis, not on a location basis, and a situs allocation is not consistent with the theory and practice with state assessed valuation procedures and (2) that the attempt to break apart a unitary assessment for the purpose of a situs assessment was causing taxpayers and the State to spend hundreds of thousands of dollars for a bureaucratic purpose that provided no social purpose other than to provide jobs to those doing the work.

BACKGROUND

Section 19 of Article XIII of the California Constitution provides that "[t]he Board shall annually assess * * * property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the State, and companies transmitting or selling gas or electricity." Differences in opinion have been expressed as to whether this means that the assessment jurisdiction of the Board extends to any company that transmits or sells electricity or only "regulated" companies. Any property subject to property tax that is not within the Board's jurisdiction, or where the Board declines to assert jurisdiction, is subject to property tax assessment by the local county assessor.

Deregulation. As a result of electrical deregulation, 22 electrical generation facilities previously owned by public utilities were sold to private companies. As an additional consequence of deregulation, it was anticipated that non-public utility companies would construct future generation facilities. Because of these developments, the Board decided to examine the question of the boundaries of its assessment jurisdiction over companies selling electricity in a post-deregulation era.

Prior to deregulation, local county assessors assessed all electrical generation facilities except those owned by the regulated public utilities. This generally included co-generation facilities and facilities using renewable sources of energy such as wind or solar. Immediately after deregulation, county assessors additionally assumed the assessment of power plants divested by regulated public utilities as well as newly constructed power plants built by private companies post-deregulation. The transfer of assessment jurisdiction of divested plants was a result of a Board regulation, Rule 905. However, beginning in 2003, the Board amended this regulation to reassert its jurisdiction over divested electrical generation facilities and certain newly constructed facilities. The Board maintained and continues to assess, those generation facilities owned by public utilities, which are primarily hydroelectric and nuclear facilities.

Revenue Allocation and Property Tax Rule 905. A significant issue raised by interested parties in the hearings on Rule 905 was the revenue allocation consequences of state vs. local assessment of electrical generation facilities. Many local jurisdictions made decisions to approve the construction of new facilities in their communities based in part on the expected property tax revenues. Under local assessment, revenue allocation was situs based. A transition to state assessment (and by default to countywide distribution) would significantly diminish the revenue proceeds from these properties. To address this concern, AB 81 (Ch. 57, Stats. 2002) changed the revenue allocation of these divested and newly constructed facilities to provide for situs based revenue allocation under state assessment. Thus, the revenue from newly constructed and repowered plants remained situs based after the Board reasserted its jurisdiction over these properties.

COMMENTS

1. **Purpose.** To provide the City of Escondido with a substantive share of property tax revenues from the Palomar power plant after it is sold to a public utility. Palomar Energy LLC, a subsidiary of Sempra Energy Resources, is building the power plant. In mid-2006, when construction is completed, a public utility, San Diego Gas & Electric (SDG&E), will purchase and operate the plant.

2. **The allocation of property tax revenues from state-assessed power plants differ depending upon if they are owned by a merchant power provider or a public utility:**

   - **Merchant Plants.** Pursuant to Revenue and Taxation Code Section 100.9, beginning in 2003-04, the revenue from state assessed electrical generation facilities are allocated only to the governmental agencies and school entities in the tax rate area where the property is located.

   - **Public Utility Owned Power Plants.** Any increase in property tax revenue associated with the construction or acquisition of a new power plant if owned by a public utility is treated as incremental growth and shared countywide.

3. **Without this bill, the property tax revenues from this facility will switch from situs based to county-wide distribution upon sale to the public utility.** If the power plant continues to be owned by a merchant power provider, then taxes would be distributed by tax rate area under existing law. However, once the Palomar power plant property is sold to a public utility, the provisions of Section 100.9 would no longer apply. Instead, the revenues derived from the property would switch to the county-wide pool system. This would result in a significant reduction of tax revenue to the City of Escondido.

4. **Since deregulation, tax revenues from newly constructed power plants in California have been allocated on a situs basis.** This bill is consistent with the revenue allocation procedures for divested power plants and newly constructed power plants since the restructuring of the electric utility industry in California. Many local jurisdictions made decisions to host the construction of new power plants based in part on expected property tax revenues. From 1999 through 2003, situs based revenue allocation occurred by default since these properties were locally assessed. After these plants were transferred to state assessment, legislation was enacted to continue situs based revenue allocation.

Assembly Bill 2846 (Salinas) Chapter 786

Low Income Housing – Tax Credits

Effective January 1, 2005. Adds Section 402.95 to the Revenue and Taxation Code.

Sponsor: State Controller Steve Westly

BILL SUMMARY

This bill specifies that when valuing properties financed with low-income housing tax credits using the income approach to value, the benefit of the tax credits is not to be considered income.

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 402.9 prohibits the assessor, when appraising rental housing for persons of low and moderate income that was financed under Section 236 or Section 515 of the federal Housing Act, under the income method of appraisal, from considering as income certain subsidy payments made by the federal government to a lender that financed that property.

AMENDMENT

This bill adds Section 402.95 to the Revenue and Taxation Code to expressly prohibit the assessor, when appraising any property under the income method of appraisal, from considering as income the benefit of federal and state low-income housing tax credits allocated by the California Tax Credit Allocation Committee pursuant to Section 42 of the Internal Revenue Code and Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code.

IN GENERAL

Investors purchase or develop low-income housing projects in anticipation of periodic monetary benefits. That is to say, investors are motivated by the expectation that their financial rewards, including income tax credits, will significantly outpace their operating expenses. Since low-income properties are acquired in anticipation of monetary income, and since these properties have restrictions on resale which effectively limit the availability of reliable sales data for comparable properties, the income method of appraising is preferred by property tax assessors.

The Low Income Housing Tax Credit program, put in place by the Tax Reform Act of 1986, is intended to provide incentives for private investment in housing for low-income families. Under the program, low-income housing projects developed after 1986 may be awarded tax credits in amounts up to 9% of the development costs, excluding land.

Each year, the federal government allocates a fixed amount of low-income tax credits to each state. The annual allocation provides a 10-year stream of tax credits in the amount of the annual monetary amount allocated. That is, if a state's allocation of tax credits were $10 million for a given year, that year's allocation would produce 10 years of credits at $10 million per year.

There are two federal tax credit rates—one of approximately 9 percent and another of approximately 4 percent. These credits are commonly called the "9-percent tax credits" and the "4-percent tax credits". The 9-percent tax credits can be used for new construction or major rehabilitation in cases where the project does not receive any other form of federal subsidy. The 4-percent tax credits can be used for new construction or rehabilitation projects that also involve some other form of federal subsidy or for the acquisition costs of improvements that will be rehabilitated.

Shortly after the federal program was enacted, the California Legislature authorized a state low-income housing tax credit to augment the federal program. The state low-income housing tax credit program is codified in several California statutes and accompanying regulations. State low-income housing tax credits can only be used to offset a California State income tax liability.

The state program does not stand alone; rather, it is designed to supplement the federal tax credit program, with state tax credits used to bridge a project's remaining financing gap. State tax credits are available only to projects that also have received federal tax credits. The state program allows limited partners/investors to take the state tax credits over a 4-year period in contrast to the 10-year federal period.

COMMENTS

1. **Purpose.** To provide statewide uniformity in the assessment of low-income housing that receives tax credits.

2. **Key Amendments.** The April 28 amendments clarify that the provisions of this bill apply to both federal and state income tax credits.

3. **Low Income and Moderate Income Rental Housing Exemption.** About 60% of the properties receiving income tax credits are already exempt from property tax under the welfare exemption.

4. **Federal and State Credits.** Low income housing tax credits may be used for the acquisition, development, or substantial rehabilitation of low-income, multi-family housing; both federal and state tax credits are available. The California Tax Credit Allocation Committee, a unit of the State Treasurer's Office, allocates each year's available federal and state credits among competing projects based on criteria adopted by the committee.

5. **Income Tax Implications.** The limited partners/investors in a tax credit project receive the credits, which can be used to reduce the investors' income taxes payable on a dollar-for-dollar basis, in exchange for investing equity funds in a project. Tax credit projects are subject to a regulatory agreement that, among other restrictions, limits project rents for a prescribed period.

6. **Current Law is Silent on the Valuation of these Projects.** In practice, some assessors are not aware that low-income housing projects are receiving tax credits, and therefore do not capitalize the income from tax credits. Others value these

projects by (1) capitalizing the project's restricted income and (2) adding the present value of the remaining tax credits to the capitalized restricted income value.

7. **Treats tax credits and interest subsidies similarly.** Revenue and Taxation Code Section 402.9 provides that when appraising housing for persons of low and moderate income financed under Section 236 or Section 515 of the Federal Housing Act, interest subsidy payments made by the federal government are not to be included as income. This bill would specify comparable treatment for low and moderate income housing that receives income tax credits.

    - There are many disabled veterans who own property that qualifies for the disabled veterans' property tax exemption, but due to the fact that these disabled veterans are confined to hospitals or other medical institutions they are unable to occupy that property as their principal places of residence. In many cases the spouses of these disabled veterans continue to occupy the property as their principal places of residence.

    - It is the intent of the Legislature in enacting this act to amend the Revenue and Taxation Code to conform with the California Constitution to further extend the disabled veterans' property tax exemption to property owned by the spouse of a living disabled veteran while that disabled veteran is confined to a hospital or other care facility and to extend the disabled veterans' property tax exemption to an otherwise qualifying veteran who is unable to occupy that property as his or her principal place of residence because he or she is confined to a hospital or other care facility, provided that the property is not rented or leased to a third party.

Assembly Bill 2853 (Laird) Chapter 889
Senate Bill 1102 (Committee on Budget and Fiscal Review) Chapter 227

Parent-Child Change in Ownership Exclusion – Million Dollar Tracking

Effective August 16, 2004 via SB 1102. Identical amendments effective September 29, 2004 via AB 2853. Among other things, amends Section 63.1 of the Revenue and Taxation Code.

BILL SUMMARY

This bill makes optional county reporting of parent-child change in ownership exclusions to the Board for purposes of monitoring the $1 million benefit limit, but encourages counties to continue to report transfers.

Sponsor: Assembly Special Committee on State Mandates

LAW PRIOR TO AMENDMENT

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

Proposition 58, which was passed by the voters of California on November 4, 1986, added subdivision (h) to section 2 of article XIII A of the California Constitution, and provides, in part, that the term "change in ownership" shall not include the purchase or transfer between parents and their children of a principal residence, or the first $1 million of the full cash value of all other real property. Proposition 193 on the March 1996 ballot amended this section to apply the exclusion to transfers of real property from grandparents to grandchildren when all the parents of the grandchildren who qualify as children of the grandparents are deceased as of the date of transfer. By avoiding reassessment to current market value, children or grandchildren can preserve the Proposition 13 protected value of property acquired from their parents (or vice versa) and the property taxes on the property will remain the same.

Revenue and Taxation Code Section 63.1 provides the statutory implementation for Propositions 58 and 193. To receive the change in ownership exclusion, Section 63.1 requires the taxpayer to file a claim form with the assessor. Relevant to this bill, subdivision (f) of Section 63.1 requires each county assessor to report quarterly to the Board of Equalization all claims for the exclusion, other than those involving a principal residence. Individual county reports are then complied in order to monitor the $1 million limitation on a statewide basis. Properties transferred after the $1 million assessed value ceiling is reached are subject to reassessment at current market value.

AMENDMENT

This bill amends Section 63.1(f) of the Revenue and Taxation Code to make quarterly reports optional rather than mandatory. In addition, it adds subdivision (i) to state that the Legislature encourages assessors to continue submitting reports in recognition of the state and local interests served in monitoring the $1 million limit.

COMMENTS

1. **Purpose.** This bill stems from a hearing by the Assembly Special Committee on State Mandates to review reimbursable state mandates. The committee recommended that legislation be sought that repealed 23 mandates, including the parent-child exclusion, that have been suspended or deferred in the Annual Budget Act since at least 1992-93.

2. **Reimbursement Initially Provided.** The legislation that originally enacted Section 63.1 (Chapter 48, Statutes of 1987) deemed that the provision requiring assessors to quarterly report certain exclusions to the Board was a state mandated cost for which counties could be reimbursed. However, since 1992-93 the funding to reimburse counties for this cost in the annual budget has been zero. Due to the lack of funding, this bill makes the assessors' quarterly reports to the Board optional, but states that the Legislature, in recognizing the local interests served by this mandate, encourages assessors to continue to report exclusions claimed.

3. **Unfunded State Mandates.** Section 6 of Article XIII B of the California Constitution generally provides that when the state enacts legislation that mandates a new program or a higher level of service, the state is to provide a subvention of funds to reimburse local agencies for their costs. This bill makes optional a variety of previously required duties on local agencies for which at some point in time the annual state budget had appropriated money to reimburse locals for their cost but for which funding has been discontinued for a number of years.

4. **Statewide Tracking.** To monitor the $1 million limit of transfers of real property *other* than principal residences, the Board is required to track, statewide, the $1 million lifetime exclusion for transferors. The Board created a database of exclusions based on information compiled from each assessor to ascertain when the $1 million limit on the exclusion has been reached. The Board alerts county assessors on a quarterly basis when persons have exceeded the exclusion limit.

5. **Transfers Exceeding the Threshold Limit.** Currently about 716,500 transfers are included in the statewide database of reported transfers (non-principal places of residences) from 433,640 transferors. In it's most recent quarterly report, the Board identified 170 transfers for which a claim for the parent-child change in ownership exclusion was filed by a taxpayer but the $1 million limit had been exceeded.

6. **Related Legislation.** Identical provisions are contained in SB 1102 (Ch. 227, 2004).

Assembly Bill 2857 (Laird) Chapter 768

Appeals – Two Year Period

Effective January 1, 2005. Amends Section 1604 of the Revenue and Taxation Code.

BILL SUMMARY

This bill clarifies that when an assessment appeal application on a base year value is not timely heard and decided within two years of filing an appeal the taxpayer's opinion of value will become the taxable value of the property until the appeal is decided. For other types of appeals (i.e., decline in value, personal property, etc.) the taxpayer's opinion of value will be enrolled for the tax year covered by the application.

Sponsor: California Assessors' Association

LAW PRIOR TO AMENDMENT

A taxpayer may appeal the assessed value of his or her property for property tax purposes by filing an application for reduction in assessment with the county board of equalization or assessment appeals board. The application requires that the taxpayer state an opinion of value. In order to induce an appeals board not to delay a hearing and decision on applications, Revenue and Taxation Code Section 1604 provides that if the appeals board fails to hear evidence and make a final determination on the application within two years of the timely filing of the application, the taxpayer's opinion of market value, as reflected on the application, will be the value upon which taxes are to be levied for the tax year covered by the application. If the applicant's opinion of value has been placed on the assessment roll, because the application was not timely heard and decided, that value is to remain on the roll until the assessment appeals board makes a final determination on that application.

Revenue and Taxation Code Section 80 (a) provides that base year value appeals must be filed during the appropriate filing period for the year in which the assessment is placed on the roll or in any of the three succeeding years.

AMENDMENTS

This bill amends subdivision (d) of Section 1604 to explicitly address the distinction between placement of a taxpayer's opinion of value on the roll as it relates to base year value appeals and all other appeals. With respect to an appeal application that requests a reduction in the base year value of an assessment filed pursuant to subdivision (a) of Section 80, the applicant's opinion of value, as stated on the application, shall remain on the roll until the county board makes a final determination on the application. In instances other than an application filed pursuant to subdivision (a) of Section 80, the applicant's opinion of value shall be enrolled on the assessment roll for the tax year or tax years covered by that application. (The value will be enrolled and the taxpayer has won for that tax year or tax years by default of the assessment appeals board.)

IN GENERAL

Assessment Appeals Boards. Local appeals boards are independent agencies, separate from the assessor's office, established to decide disputes between county assessors and property owners. All 58 counties in California have appeals board proceedings. In some counties, the elected county board of supervisors will hear appeals directly, meeting as a board of equalization. Other counties, however, have a separate assessment appeals board or boards appointed by the county board of supervisors that constitute the board of equalization.

COMMENTS

1. **Purpose.** To clarify that when a county board of equalization fails within two years to make a final determination on an application for reduction in assessment involving a base year value of real property, the applicant's opinion of value shall remain on the roll until the board acts to make a final determination on the application. By making this change it clarifies that a reduction in assessed value that occurs as a result of a failure of a board to render a timely decision on an application for reduction in an assessment of personal property or one that involves a decline in value would be effective for the one year covered by the application.

2. **Key Amendments.** The June 10 amendment recasts its provisions for technical precision.

3. **The appeals board is expected to hear and decide all appeals within two years of the filing of an application**. If more than two years pass after timely filing of an application before the application is heard and decided, the taxpayer's opinion of value becomes the taxable value of the property on the assessment roll by default until the appeals board hears and decides the application.

4. **There are different types of appeals.** Base year value appeals, which apply to real property, permanently affect the upper limit of value of property for <u>all future tax years</u> as long as a property is under the same ownership or does not undergo new construction. Real property in a decline in value status and personal property appeals are assessed annually and an application appealing those values only affect the <u>one particular tax year</u> in dispute.

   - **Base Year Value Appeals.** The "Base Year Value" of a property is the Proposition 13 protected value of a property. This is the "control figure" under Proposition 13 – once the base year value is established it can increase no more than 2% per year regardless of the actual market value of the property. For applications involving base year value appeals, if the applicant's opinion of value has been placed on the roll because the appeals board was unable to hear the application timely, that value remains on the roll until the appeals board makes a final determination on the application. Base year value appeals are the most important type of appeal because of their permanence.

   - **Decline in Value Appeals**. It is possible that the base year value annually factored forward by the maximum 2% inflation factor (called the "factored base year value") could exceed its fair market value. This generally occurs when there has been a real estate market decline or damage or destruction to a property. To ensure that property owners are never assessed for more than a property's current fair market value, the law provides that as of the lien date, which is January 1 of every year, the property is to be assessed at the lower of its current market value or its factored base year value. (Section 51) Decline in value reductions may be granted automatically by the assessor without any property owner action, but where the assessor has not made such a reduction and a property owner believes a reduction is warranted an appeal may be filed. Unlike the permanent control figure of the "base year value," an appeal for a decline in value reduction is date specific and only relevant to one tax year. For applications appealing decline in value that have not been heard and decided by the end of the two-year period, the applicant's opinion of value will be enrolled on the assessment roll for the tax year or years covered by the pending application.

- **Personal Property Appeals.** Other than the tax rate, Proposition 13 does not apply to personal property. Personal property is valued each year at its current market value. Consequently an appeal must be filed each year to seek a reduction in value. In some cases, the appeal may be on the grounds that the property is not taxable.

5. **In the case of a decline in value appeal or a personal property appeal, if an appeal is not heard within two years, the taxpayer effectively has won the appeal on that particular application.** Unlike base year value appeals, these other types of appeals are specific to the tax year specified on the application. Because the taxpayer's opinion of value was placed on the roll for that tax year, the taxpayer has won by default.
6. **This bill makes it clear that in cases other than a base year value appeal, the applicant's opinion of value becomes controlling due to lack of a timely determination for the tax year or years covered by the pending application.** These provisions address a recent court case, *FlightSafety International, Inc*. v. *Los Angeles County Assessment Appeals Board* (2003) 105 Cal.App.4th 620 in which a taxpayer's opinion of value of "zero" on personal property was ordered to be placed on the roll for a seven-year period.
7. **Related Property Tax Regulation.** Property Tax Rule 309 similarly makes the distinction between base year value appeals and other types of appeals. It states:

   "For applications involving base year value appeals that have not been heard and decided by the end of the two year period provided in section 1604 of the Revenue and Taxation Code and where the two-year period has been extended pursuant to subsections (b) or (c) of this regulation, the applicant's opinion of value will be entered on the assessment roll for the tax year or years covered by the pending application, and will remain on the until the fiscal year in which the board makes a final determination on the application. No increased or escape taxes other than those required by a change in ownership or new construction, or resulting from application the inflation factor to the applicant's opinion of value shall be levied for the tax years during which the board to act.

   For applications appealing decline in value and personal property assessments that have not been heard decided by the end of the two-year period provided in section 1604, the applicant's opinion of value will be enrolled on the assessment roll for the tax year or years covered by the pending application." http://www.boe.ca.gov/proptaxes/pdf/r309.pdf

Assembly Bill 3073 (Committee on Revenue and Taxation) Chapter 354

Welfare Exemption – Limited Liability Companies
Environmentally Contaminated Property

Effective August 30, 2004, but welfare provisions operative January 1, 2005. Among other things, amends Sections 69.4, 214, 214.01, 214.02, 214.5, 214.8 and 214.14 of the Revenue and Taxation Code.

BILL SUMMARY

This bill, with respect to property taxes, (1) expressly provides that limited liability companies may qualify for the welfare exemption, and (2) improves the administration of base year value transfers provisions for contaminated property and allow for inflation adjustments in the equal or lesser than value comparison.

Sponsor: Board Member John Chiang

Limited Liability Companies
Revenue and Taxation Code Sections 214, 214.01, 214.02, 214.5, 214.8 and 214.14

LAW PRIOR TO AMENDMENT

Current law provides for a “welfare exemption” under which property is exempt from property taxation if it is used exclusively for religious, hospital, scientific, or charitable purposes, and it is owned and operated by funds, foundations, or corporations meeting numerous statutory requirements.

The welfare exemption is created by Article XIII, Section 4, which authorizes the Legislature to exempt property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or **other entities**. In implementing this provision, the Legislature has specified in Revenue and Taxation Code Section 214 that the “**other entities**” include “community chests, funds (or) foundations.”

AMENDMENT

This bill amends various provisions of the welfare exemption to expressly add limited liability companies as an eligible “other entity” if they qualify for exemption. It would also require the Board of Equalization (Board) to adopt regulations to specify the ownership, organizational, and operational requirements for a limited liability company to qualify for the welfare exemption.

IN GENERAL

Welfare Exemption. Under Section 4(b) of Article XIII of the California Constitution, the Legislature has the authority to exempt property (1) used exclusively for religious, hospital, or charitable purposes, and (2) owned or held in trust by nonprofit organizations operating for those purposes. This exemption from property taxation, popularly known as the *welfare exemptio*n, was first adopted by voters as a

Constitutional Amendment on November 7, 1944. With this amendment, California became the last of 48 states in the country to provide such an exemption from property taxes. The ballot language in favor of the amendment stated:

> These nonprofit organizations assist the people by providing important health, citizenship and welfare services. They are financed in whole or in part by your contributions either directly or through a Community Chest. It is good public policy to encourage such private agencies by exemption rather than to continue to penalize and discourage them by heavy taxation.

When the Legislature enacted Section 214 of the Revenue and Taxation Code to implement the Constitutional provision in 1945, a fourth purpose, *scientific*, was added to the three mentioned in the Constitution. Section 214 parallels and expands upon the Constitutional provision by exempting property used exclusively for the stated purposes (religious, hospital, scientific, or charitable), owned by qualifying nonprofit organizations if certain requirements are met. An organization's *primary* purpose must be either religious, hospital, scientific, or charitable. Whether its operations are for one of these purposes is determined by its activities. A qualifying organization's property may be exempted fully or partially from property taxes, depending on how much of the property is used for qualifying purposes and activities. Section 214 is the primary welfare exemption statute in a statutory scheme that consists of more than 20 additional provisions. Over the years, the scope of the welfare exemption has been expanded by both legislation and numerous judicial decisions.

Owned and Operated Requirement. Section 214 requires that, to be eligible for the welfare exemption, both the owner and the user of a property must meet specific requirements. The first step in determining welfare exemption eligibility is to determine if the organization itself qualifies. In brief, an organization must meet the following requirements:

- It must be organized and operated for exempt purposes;
- It must not be organized or operated for profit;
- The owner organization must have an Internal Revenue Code (IRC) §501(c)(3) or Revenue and Taxation Code 23701d letter of exemption;
- The user organization may also qualify with an IRC §501(c)(4) or Revenue and Taxation Code §23701f or §23701w letter;
- The organization’s earnings must not benefit any private shareholder or individual;
- Articles of Incorporation must contain an acceptable statement of irrevocable dedication of the property to exempt purposes;
- Articles must contain an acceptable Dissolution Clause; and
- The property owner must be the owner of record on the lien date.

Where there are different owners and operators, property is not eligible for exemption unless the **owner and operator** meet the specific requirements of Section 214. An operator is a user of the property on a regular basis, with or without a lease agreement. Typically, the owner and operator are one and the same and the filing of one claim for exemption will suffice. However, it is not necessary that the owner and the operator of the property be the same legal entity. If property is owned by one exempt organization and operated by another exempt organization, each must qualify and file a claim for exemption. If the operator is not an exempt organization, the welfare exemption is not available on the property.

Specific Requirements for Use of Property. The Constitution and statutes impose a number of requirements that must be met before property can become eligible for exemption. Nonprofit organizations claiming exemption for their properties must satisfy various organizational requirements and must meet additional requirements that govern the uses of their property. With respect to the use of the property:

- The property must be used exclusively for exempt purposes.
- The property must be used for the actual operation of an exempt activity.[1]
- The property is not to be used to benefit any person through distribution of profits, compensation or the more advantageous pursuit of his or her business or profession.

COMMENTS

1. **Purpose.** To provide nonprofit organizations that currently qualify for the welfare exemption the option of forming limited liability companies for purposes of owning and operating their properties.

2. **Key Amendments.** The June 28 amendment makes these provisions operative on January 1, 2005. The June 15 amendment added these provisions which were previously included in AB 3075 (AR&T).

3. **Many nonprofit organizations have approached the Board investigating the possibility of reforming as an LLC.** Under current law and regulations, ownership by a limited liability company (LLC) is not expressly provided, even if it is wholly owned by qualifying nonprofit organizations. Board staff has responded to those inquiring that existing property tax law and regulations would not permit the welfare exemption to be extended to property owned by an LLC and that a modification of existing laws and/or regulations would be necessary to expressly provide for LLCs.

4. **Other Entities.** Section 214 implements Section 4(b) of Article XIII of the California Constitution, which provides that the Legislature may exempt, “property used exclusively for religious, hospital or charitable purposes and owned or held in trust by corporations or other entities" that meet certain requirements. The original language in the Constitution identified the nonprofit organizations as “community chests, funds, foundations or corporations,” recognizing the types of nonprofit entities in existence at that time. These entities also have been specified in Section 214 since its enactment in 1945. Subsequent amendment to the Constitution however, replaced this language with more general language, “corporations or other entities.” The intent of the Constitutional amendment in 1945 was to allow exemption from property taxes to all nonprofit organizations providing services to the community and meeting the specified requirements. Thus, amending Section 214 to expressly include LLCs would update the statutory provision and achieve consistency with voter intent in approving the original Constitutional Amendment.

[1] The exemption is limited to the amount of property reasonably necessary for the accomplishment of the exempt purpose. Portions of the property in excess of that reasonably necessary for the purposes of the organization do not meet the requirements for property tax exemption and are subject to taxation.

5. **Rule Petition.** In May 2003, a petition was filed with the Board to adopt a new regulation (Property Tax Rule 136) that would extend the welfare exemption to a LLC organized and operated for exempt purposes. In response, the Board began a series of interested parties meetings and developed a regulation and a companion legislative proposal that would allow LLCs wholly owned by nonprofit tax exempt organizations to qualify for the welfare exemption. A group of interested parties, including assessors and tax attorneys, worked in July and August of 2003 to reach consensus on the proposed legislation and regulation. The Board authorized publication of the proposed regulation in October 2003 and a public hearing was held on May 25, 2004. On June 30, 2004, the Board adopted the proposed regulation with an amendment that defines "qualifying organizations" to include governmental entities. The regulation, as amended, would allow a nonprofit limited liability company jointly owned by a nonprofit tax-exempt organization and a government entity to qualify its property for exemption.
6. **Pending Rule.** The regulation's provisions define a qualifying LLC for purposes of Section 214 as one that is wholly owned by one or more qualifying nonprofit organizations, or co-owned by a nonprofit organization and a governmental entity. The proposed regulation enumerates organizational and operational requirements intended to ensure that qualifying LLCs adhere to the same requirements as other nonprofit [tax-exempt] entities currently eligible for the exemption. The corresponding statutory changes that this bill makes would add the LLC as a qualifying entity in Section 214 et seq., thereby allowing the LLC and its property to qualify for the exemption only if all the existing requirements for the welfare exemption are satisfied. The rule language is available at http://www.boe.ca.gov/regs/regscont.htm.
7. **The enactment of the bill and the companion regulation should not cause an expansion of the exemption, but instead authorizes a change in the type of legal entity qualifying for exemption.** Under the proposed regulation, the LLC must be wholly owned by qualifying nonprofit tax-exempt organizations or co-owned by a qualifying nonprofit tax-exempt organization that is eligible for the welfare exemption and a governmental entity. Both the LLC and its property must satisfy the same legal requirements as other legal entities eligible for the welfare exemption. Thus, nonprofit organizations already receiving the welfare exemption for their real property would have the option of transferring these assets to a qualifying LLC, as specified in proposed Rule 136. The addition of governmental entities as qualifying organizations does not cause an expansion of the exemption since governmental property is already exempt from property taxation. (Article XIII, Section 3)

Contaminated Property

Revenue and Taxation Code Section 69.4

LAW PRIOR TO AMENDMENT

Section 69.4 and Section 74.7 of the Revenue and Taxation Code implement Proposition 1 of November 1998 to provide one of two possible types of property tax relief to property owners who unknowingly purchase contaminated property. Property owners may either transfer their base year value of the contaminated property to a replacement property or may rebuild their property after the land contamination is cleaned up and receive a new construction exclusion. Under either option, the property owner may retain their prior level of taxation under Proposition 13.

Chapter 941, Statutes of 1999 (SB 1231), added Section 69.4 to the Revenue and Taxation Code to provide the necessary Legislative implementation of the constitutional amendment. Since many of the specific conditions and limitations are detailed in the constitutional language, the statutory language related to base year value transfers is brief.

AMENDMENT

Certain elements are currently lacking in the statutory language for counties to evaluate whether a replacement property qualifies for the base year value transfer. This bill would amend Section 69.4 to address the following issues:

Value Comparison Criteria. Section 69.5 provides that "equal or lesser value" means that the full cash value of the replacement property at the time of its purchase must be 105% or less of the full cash value of the sold property if purchased in the *first* year following the sale of the original property, and 110% or less if purchased in the *second* year following the sale. Section 69.3 provides thresholds of 105% in the first year, 110% in the second year, and 115% in the third year. Section 69.4 is silent as to permitting an inflation adjustment for purposes of the equal or lesser value requirement.

Proposition 1 provides that the replacement property be acquired within 5 years. Following precedents set in Sections 69.3 and 69.5, this bill would amend Section 69.4 to specify value thresholds that step up from 105% in the first year following acquisition of the replacement property to 125% in the fifth year following such acquisition. This would give affected property owners some protection from being disqualified as a consequence of inflation.

Comparability. The Legislative Analyst stated in the ballot pamphlet describing Proposition 1 that "[t]he replacement property could involve either (1) the repair or reconstruction of a damaged structure on the contaminated site or (2) purchase of a *similar* structure on a different site." (Emphasis added.) In addition, the "Argument in Favor of Proposition 1" discussed how innocent homeowners who are victims of environmental disasters could receive relief for a replacement home under this constitutional amendment. Consequently, this bill would provide that property purchased as a replacement for contaminated property must be similar or comparable to the property being replaced.

Requesting Relief. This bill would specify that the Board prescribe a form to claim the base year value transfer. It would also detail the information on the claim, as specified by Proposition 1, that a taxpayer would be required to provide on the claim in order to receive relief. In addition, a three-year time limit for requesting relief would be instituted to be consistent with other provisions of law authorizing transfers of base year value.

BACKGROUND

On November 3, 1998, the voters of California approved Proposition 1, adding subdivision (i) to Section 2 of Article XIII A of the California Constitution. Upon implementation by the Legislature, this amendment allows one of two forms of property tax relief for qualified contaminated property. Specifically, property owners are able to choose from either of the following:

1. They may sell or otherwise transfer the qualified contaminated property and transfer its base year value to a replacement property of equal or lesser value. The replacement property must be acquired or newly constructed within five years after the sale or transfer of the qualified contaminated property. The replacement property may be located in a different county than the qualified contaminated property, only if the county in which the replacement property is located, has passed a resolution accepting such base year value transfers.

2. If structures located on the qualified contaminated property are substantially damaged or destroyed in the course of the remediation of the environmental problems, the repair or replacement of such structures may be excluded from the definition of "new construction" provided that the repaired or replacement structure is similar in size, utility, and function to the original structure.

This relief applies to replacement property that is acquired or newly constructed on or after January 1, 1995, and to property repairs performed on or after that date.

COMMENTS

1. **Purpose.** To improve the administration of base year value transfers under Section 69.4 and to protect taxpayers from being disqualified under the equal or less than value test due to the lack of an inflation adjustment over the five year period allowed to obtain a replacement property.

2. **Key Amendments.** The June 15 amendment added these provisions which were previously included in AB 3075 (AR&T).

Senate Bill 451 (Ducheny) Chapter 853

Possessory Interests – Military Housing

Effective January 1, 2005. Adds Section 107.4 to the Revenue and Taxation Code.

BILL SUMMARY

This bill specifies that rental housing located on leased land on a military base, as specified, is not a possessory interest because it lacks the element of independence.

Sponsor: De Luz Family Housing

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 107 sets forth the three essential elements that must exist to find that a person's use of publicly-owned tax-exempt property rises to a level of a taxable possessory interest. Those elements are independence, durability and exclusivity.

With respect to the element of independence, Section 107(a)(1) defines "independent" to mean "the ability to exercise authority and exert control over the management or operation of the property or improvements, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the property or improvements. A possession or use is independent if the possession or operation of the property is sufficiently autonomous[2] to constitute more than a mere agency."

Relevant case law and Property Tax Rule 20, a regulation, additionally require that a possessor derive "private benefit." "Private benefit" means "that the possessor has the opportunity to make a profit, or to use or be provided an amenity, or to pursue a private purpose in conjunction with its use of the possessory interest. The use should be of some private or economic benefit to the possessor that is not shared by the general public."

AMENDMENT

This bill adds Section 107.4 to the Revenue and Taxation Code to provide that a possession or use of land or improvements is **not independent** if that possession or use is pursuant to a contract, including, but not limited to, a long-term lease, for the private construction, renovation, rehabilitation, replacement, management, or maintenance of housing for active duty military personnel and their dependents, if all of the following criteria are met:

[2]Property Tax Rule 20 specifies that to be "sufficiently autonomous" to constitute more than a mere agency, the possessor must have the right and ability to exercise significant authority and control over the management or operation of the real property, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the real property.

Housing

- The housing is on a military facility under military control.
- All services normally provided by a municipality are required to be purchased from the military facility or a provider designated by the military.

Business Operation

- The private contractor is not given the right and ability to exercise any significant authority and control over the management or operation of the military family housing, separate and apart from the rules and regulations of the military.
- The military controls the distribution of revenues from the project to the private contractor.
- The military sets the rents charged for the housing units to military personnel or their dependents.

Occupancy/Access

- The military prescribes rules and regulations governing the use and occupancy of the property.
- Tenants are designated by a military housing agency.
- Evictions from the housing units are subject to the military justice system.
- The military has the authority to remove or bar persons from the property.
- The military may impose access restrictions on the contractor and its tenants.

Initial Construction

- The number of units, the number of bedrooms per unit, and the unit mix are set by the military, and may not be changed by the contractor without prior approval by the military.
- The private contractor is allowed only a predetermined profit or fee for constructing the housing.
- The military approves the financing for the project selected by the contractor/developer.
- The construction of the housing is performed under military guidelines in the same manner as construction that is performed by the military.

An interest that is not "independent" fails to meet one of the three elements that must exist in order for the interest to be subject to property tax. Thus, the housing units would not be subject to property taxation as a possessory interest assessable to the contractor/developer/operator. This bill also requires that any property tax savings as a result of this bill will inure solely to the benefit of the residents of the military housing through improvements such as a child care center provided by the private contractor.

IN GENERAL

In certain instances a property tax assessment may be levied when a person or entity uses publicly-owned real property that, with respect to its public owner, is either immune or exempt from property taxation. These uses are commonly referred to as "possessory interests" and are typically found where an individual or entity leases, rents or uses federal, state or local government facilities and/or land.

Section 107 establishes parameters within which assessors and judicial authorities are to determine the existence of taxable possessory interests. Generally, those determinations are made according to the facts and circumstances in each individual case.

BACKGROUND

Much of the existing military housing stock is in poor condition and housing has been identified as a source of retention difficulties faced by the military.

Under the Military Housing Privatization Initiative (MHPI) Act authorized by Congress in 1996, the military has started to privatize on-base family housing units. The specifics of the implementation plans developed by the Army; Air Force, Navy, and Marine Corps plans vary. However, the basic frameworks for these plans are similar:

- Lease military base land to private contractor/developer for 50 years.
- Convey existing family housing units and infrastructure to the contractor/developer for replacement or renovation.
- Contractor/developer to build additional family housing units, as required.
- Contractor/developer will assume responsibility for property management, including repairs and maintenance.
- Tenant costs including utilities may not exceed basic allowance for housing (BAH).
- At the end of the contract, ownership of the housing units will revert to the military authority.

The Military Housing Privatization Initiative is managed by the Competitive Sourcing and Privatization (CS&P) Office, in the Office of the Deputy Under Secretary of Defense (Installations and Environment). The Department of Defense maintains an extensive Web Site on the program at http://www.acq.osd.mil/housing/.

COMMENTS

1. **Purpose.** The author's background sheet explains the purpose of the bill as follows:

> **PROBLEM:** As a result of the long-term lease, which is necessary for the contractor to obtain financing, under the current interpretation of California law a possessory interest is created. This interest is taxable in the same manner as privately held property. The taxes, which can be substantial, reduce the amount of revenue from the project and hence reduce both the construction funds that can be financed and the funds necessary for maintenance. This appears to be an unintended consequence of the MHPI. The result is that contractors will not be able to build housing units to as high a standard as they otherwise would. And maintenance funds will suffer threatening the quality of life of residents.
>
> **SOLUTION:** The solution is to clarify existing law as to the definition of possessory interest. In order for a possessory interest to be created it must be deemed to be independent, durable and exclusive. While it can be argued that the interest created under the MHPI is none of these, the courts have said that legislative clarification is needed. Currently, based on an earlier

military leasing act (Military Leasing Act of 1947), the courts are considering such interests to be taxable. This bill redefines "independence" under the definition of "possessory interest" to specifically address situations where the military has primary control over the project.

Additionally, the author states that this bill would not harm local government finances because, with respect to the existing housing stock that has been conveyed to private developers and will be replaced or renovated, that housing stock was not previously subject to property tax when owned directly by the military. With respect to the impact of new housing, the author states that local governments will not be negatively impacted because emergency services will be provided by the military base and schools would be compensated by Federal Impact Aid. The author states that, in fact, on-base housing will likely result in a positive impact to local governments because of reduced traffic congestion and reduced demand for other public services (police, fire, emergency medical, housing subsidies, etc.) by having fewer military families living off base.

2. **Key Amendments.** The **August 17, 2004** amendments specify that these provisions apply only to MHPI properties and adds uncodified legislative intent language. The **June 26, 2003** amendment provides that if the amount of property tax reduction resulting from this bill is unknown, the private contractor may make a reasonable estimate of savings in ensuring that the property tax exclusion will inure to the residents of the military housing. This bill relates to property that is currently subject to tax in San Diego County and the property tax due is known. However, this bill may also apply to housing constructed in the future, and the amendment is intended to ensure that the assessor is not required to value the property for the purpose of determining the amount of property taxes that would be levied absent the exclusion that this bill creates. The **June 3, 2003** amendment requires that any reduction in property taxes on leased property used for military housing under the MHPI will inure solely to the benefit of the residents of the military housing through improvements, such as a child care center provided by the contractor. As introduced, this bill would not have required that any property tax savings generated would have ultimately inured to the benefit of the military personnel living in the residences. Other sections of law extending a property tax exemption to an otherwise non-tax exempt entity require that property tax savings inure to the worthy organization in question. See for example, Section 206.2 related to property leased to churches and Section 202.2 for property leased to free libraries and museums. The June 3 amendment also deletes an amendment made on April 21 to provide that the addition of Section 107.4 does not constitute a change in, but is declaratory of, existing law. Presumably, this would have resulted in a refund of property taxes previously paid by De Luz Family Housing. The **April 21, 2003** amendment also made several other nonsubstantive changes.

3. **To date, four projects under the Military Housing Privatization Initiative have been awarded and one is pending approval in California. In addition, there are potentially six more projects to be awarded in California.**

   The awardee/developer/general partner of the projects have been

   - Hunt Building Corp. (El Paso, Texas) for Camp Pendleton, Phase 1

- Location: San Diego County
- Status: Possessory Interest Assessed, Taxpayer Appealed, Assessment Appeals Board upheld assessment.

- Lincoln Property Co. (Dallas, Texas) and Clark Realty Capital (Bethesda, Maryland), LLC for the Naval Complex San Diego.
  - Location: San Diego County
  - Status: Possessory Interest Assessed, Taxpayer Appealed on valuation issues, but not on the issue that the possessory interest was improper.
- The U.S. Army, U.S. Navy, and Clark Pinnacle Family Communities, LLC[3] have formed a **public-private partnership** (the Monterey Bay Military Housing LLC- the members of which are the U.S. Secretary of the Army on behalf of the Departments of the Army and Navy and Clark Pinnacle LLC) to operate and construct military family housing communities for the Presidio of Monterey and the Naval Postgraduate School in Monterey Bay, California.
  - Location: Monterey County
  - Status: Board of Equalization legal staff reviewed the proposed contracts in April 2003 and opined that under the specific circumstances of the contract, an agency relationship exists between the federal government and the LLC. As an agent of the federal government, the LLC lacks the independence necessary to have a taxable possessory interest.
- The U.S. Army and Clark Pinnacle Family Communities, LLC have formed a **public-private partnership** to construct, renovate, and operate military family housing communities at Fort Irwin (San Bernardino County), Moffett Airfield (Santa Clara County), and Parks Reserve Forces Training Area (Alameda County).
- An award for the Beale Air Force Base is pending.
  - Location: Yuba County
  - Status: Not yet constructed.

4. **San Diego County has assessed a possessory interest in the Camp Pendleton project (De Luz Family Housing).** De Luz filed an appeal and the San Diego Assessment Appeals Board found that a taxable possessory interest exists. It is unknown if the taxpayer will file suit in Superior Court. In addition, San Diego County has also assessed a possessory interest in the Naval Complex San Diego project. That taxpayer also filed an appeal, but only on the issue of valuation.

5. **According to the Department of Defense, the property tax implications of these projects are not guaranteed.** The website to potential bidders notes: "Are property taxes considered in these deals? Although DoD will not negotiate with the local jurisdiction on any tax abatements, the developer is free to negotiate to achieve any tax abatements." http://www.acq.osd.mil/housing/faqs.htm#27

6. **The original construction of the De Luz homes in the early 1950's was the focus of a landmark California Supreme Court decision on the valuation method applied to possessory interests**: *De Luz Homes, Inc.* v. *County of San*

[3] Clark Pinnacle Family Communities, LLC is a joint venture between Clark Construction Company (Bethesda, Md) and Pinnacle Realty Management (Seattle, Washington).

Diego, (1955) 45 Cal.2d 546. In 1949, Congress approved the Wherry Housing Program that was intended to bring private homebuilders into the rental housing market for military personnel without using military construction funding. The original De Luz homes were constructed under this program. Under the program, a developer acquired a land lease in 1952 and built housing rented to military families at Camp Pendleton which was subsequently subject to property taxation as a possessory interest. The *De Luz* possessory interest case was not about whether the developer had a taxable possessory interest in the property in the first instance, but rather how to properly value the possessory interest. Apparently, congressional concerns with "windfall" profits accruing to private developers under the program led to its effective termination in 1955, and beginning in 1957 the military began purchasing the homes constructed by private developers under the program. Thus, because Wherry housing was eventually purchased by the military (which is immune from state-imposed property tax), the military housing built under that program, including the De Luz homes, have not been subject to property tax in California until the 2000 conveyance to a private developer under the 1996 Military Housing Privatization Initiative program. See CRS Report for Congress, "Military Housing Privatization Initiative: Background and Issues, July 2, 2001: http://www.acq.osd.mil/housing/docs/crs.pdf.

7. **Other privately owned military housing on leased military property is currently subject to a possessory interest tax.** Since 1991, Ventura County has levied a possessory interest tax on the private contractor for 300 military residential housing units available for rent to military personnel on land leased by the Navy at Port Hueneme, California. This housing was built under the Section 801 Housing Program (a build-to-lease guarantee to the property developer) approved by Congress in 1984. In addition to the recent taxation of a possessory interest in San Diego County and the possessory interest in Ventura County, other counties may also have been assessing possessory interests in other privately-operated military housing located on military bases.

8. **Independence**. To qualify as a possessory interest, the right to use property must be sufficiently exclusive, durable and independent of the public owner to constitute **more than an agency**. *Pacific Grove-Asilomar Operating Corp. v. County of Monterey* (1974) 43 Cal.App.3d 675, 684. "If, in practical effect, one of the parties has the right to exercise complete control over the operation, an agency relationship exists;..." (*Nichols v. Arthur Murray, Inc*. (1967) 284 Cal. App.2d, 610, 6B). Pacific Grove-Asilomar Operating Corp is a nonprofit corporation organized under the laws of the State of California solely for the purpose of managing for and on behalf of the California Department of Parks and Recreation the real property and all improvements on the "Asilomar Conference Grounds." In the *Pacific Grove* case, the Court found that an agency was created by the agreement there in question; the court concluded that Asilomar's management of the property was not independent, but subject to state control in every way. To date, that decision appears to be one of the few possessory interest cases in which an appellate court has concluded that an agency relationship existed.

9. **If it is determined that the contractor's interest rises to the level of a taxable possessory interest, then any restrictions, such as the restrictions on the rent that may be charged, must be reflected in the value of the possessory interest.**

   Section 402.1 provides that in the assessment of land, the assessor must consider the effect upon the value of any enforceable restrictions to which the use of the land may be subjected. For instance, the military will restrict the contractor's use and possession of the land and improvements and will restrict the contractor's right to set rental fees on the land and the improvements. These restrictions must be considered by the assessor in valuing the land and improvements. See BOE Annotated Letter 660.0171: http://www.boe.ca.gov/proptaxes/pdf/660_0171.pdf

10. **Prior Constitutional Considerations.** Legislation to exempt various possessory interests by statute has been often argued to be an "unconstitutional" exemption of real property. It is claimed that the appropriate course of action is to instead seek the approval of the voters of California by proposing a constitutional amendment to exempt the particular class of real property from property taxation. Therefore, some may argue that this legislation, if enacted, would similarly constitute an "unconstitutional" exemption of real property. However, in *City of San Jose v. Carlson (1997) 57 Cal.App. 4th 1348,* the court acknowledged the appropriateness of Legislative action to set parameters on the element of durability. A similar rationale could be made for this bill, with respect to the element of independence. The Sixth District Court of Appeals in *City of San Jose* invited the Legislature to establish some statutory standards in measuring durability. The court stated:

    > "Although we agree that the element of durability seems to have been 'diluted to a degree of almost nonexistence' (*United Airlines, Inc.* v. *County of San Diego* (1991) [cite omitted]), the Legislature has not seen fit to reverse the growing trend toward finding taxable possessory interests in short-term uses, even in its most recent amendments to Section 107. If there is a sound basis for distinguishing between a second time user and a third time user of government-owned property for purposes of identifying a taxable possessory interest***, it is within the province of the Legislature to clarify the parameters of that interest in terms of frequency, duration, and length of time between uses.*"** [Emphasis added.]

11. **The MHPI provides advantages for the military and provides venture capital opportunities for the private sector.** There is a private or economic benefit to the private sector developers that ultimately seek and win the contract to build, rehabilitate, and manage the housing units on military bases. The Department of Defense(DOD) notes: Advantages for the Military, Venture Capital Opportunities for the Private Sector MHPI promotes a mutually beneficial relationship between DoD and the private sector. For DoD, it results in the construction of more housing built to market standards for less money than through the military construction process. Commercial construction is not only faster and less costly than military construction, but private-sector funds significantly stretch and leverage the DoD's limited housing funds. Developers and financiers can find significant venture capital opportunities in DoD housing. Privatization opens the military construction market to a greater number of development firms. MHPI stimulates the economy through increased

building activity, and MHPI projects can provide a long-term continuous inflow of capital to an investor**.** http://www.acq.osd.mil/housing/overview.htm

12. **This bill requires that any reduction in property taxes on leased property used for military housing under the MHPI will inure solely to the benefit of the residents of the military housing through improvements, such as a child care center provided by the contractor.** Other sections of law extending a property tax exemption to an otherwise non-tax exempt entity require that property tax savings inure to the worthy organization in question. See for example, Section 206.2 related to property leased to churches and Section 202.2 for property leased to free libraries and museums.

13. **This bill provides that if the amount of property tax reduction resulting from this bill is unknown, the private contractor may make a reasonable estimate of savings in ensuring that the property tax exclusion will inure to the residents of the military housing**. This bill relates to property that is currently subject to tax in San Diego County and the property tax due is known. However, this bill may also apply to housing constructed in the future, and the amendment is intended to ensure that the assessor is not required to value the property for the purpose of determining the amount of property.

14. **If this bill passes and the possessory interest held by the developer/operator is exempt from property tax, the military personnel that live in homes <u>would not</u> subsequently be directly assessed a taxable possessory interest.** Some governmental employees who reside in tax-exempt governmentally-owned property, (for example forest service employees), receive direct possessory interest assessments. However, active duty military personnel are not subject to such taxable possessory interests. In 1980, the 9th Circuit Court of Appeals in *United States v. Humboldt County* 628 F.2d 549 held that the occupancy of rent-free housing to military personnel on base at Beale Air Force Base in Yuba County and off-base near Centerville Beach Naval Facility in Humboldt County was not durable, nor did it confer a private benefit to the military personnel, and thus not a taxable possessory interest.

15. **Related Legislation.** Similar legislation was contained in this year's AB 1905 (Parra) which was held in the Assembly Appropriations Committee and in SB 1631 (Morrow) in 2002, which did not pass out of the Senate Revenue and Taxation Committee.

Senate Bill 764 (Morrow) Chapter 544

Disabled Veterans' Exemption – Annual Increase

Effective September 16, 2004; but operative January 1, 2006. Amends Section 205.5 of the Revenue and Taxation Code.

BILL SUMMARY

This bill increases the amount of the disabled veterans' exemption annually by an inflation factor beginning with the January 1, 2006 lien date.

Sponsor: Cal-San Diego Paralyzed Veterans Association

LAW PRIOR TO AMENDMENT

Article XIII, Section 4 of the California Constitution provides that the Legislature may exempt from property tax, in whole or in part, the home of a person or a person's spouse, including an unmarried surviving spouse, if the person, because of injury incurred in military service, is totally disabled. This exemption is commonly referred to as the "disabled veterans' exemption." The disabled veterans' exemption is also available to the surviving spouse of a person who has died as a result of a service connected injury or death while on active duty in military service.

Revenue and Taxation Code Section 205.5 provides the statutory implementation of the disabled veterans' exemption. A $100,000 "basic exemption" is provided on a one time filing basis to qualified persons. If household income is less than a specified amount, the amount of the exemption is $150,000. The income threshold for the "low income exemption" is adjusted annually by an inflation factor. For the 2004 assessment year, the household income limit was $44,302. The "low income exemption" requires an annual filing to reaffirm income eligibility.

Qualification	**Basic Exemption**	Low Income Exemption **($44,302)**
VETERAN DISABILITY RATING = 100% DISABILITY COMPENSATION = 100% Blind LOST TWO OR MORE LIMBS **SPOUSE OF MILITARY PERSONNEL** SURVIVING SPOUSE OF DISABLED VETERAN SURVIVING SPOUSE OF PERSON KILLED IN ACTIVE DUTY	**$100,000**	**$150,000**

AMENDMENT

This bill amends Section 205.5 of the Revenue and Taxation Code to annually increase the amount of the disabled veterans' exemption by an inflation factor, commencing on January 1, 2006, and for each assessment year thereafter. The factor will be based on the annual percentage change, measured from February to February of the two previous assessment years in the California Consumer Price Index for all items.

IN GENERAL

Section 4(a) of Article XIII of the California Constitution grants the Legislature the authority to exempt from property tax, in whole or in part, the home of a person (or a person's spouse) who is injured in military service. This exemption is commonly referred to as the "disabled veterans' exemption." Injuries that qualify a veteran for the exemption include: (1) a disability rating at 100%, (2) blindness, and (3) lost use of two or more limbs. Additionally a veteran that has a disability compensation rating at 100% because he or she is unable to secure or follow a substantially gainful occupation is also eligible for the disabled veterans' exemption. The spouse of a disabled veteran is able to maintain the exemption after the veteran's death as long as the spouse is unmarried. Additionally, since 1994, pursuant to a constitutional amendment, (Proposition 160, November 1992) the unmarried spouse of a person who dies as a result of a service-connected injury or disease while on active duty is able to qualify for the disabled veterans' exemption.

Section 205.5 of the Revenue and Taxation Code implements the Legislature's authority to provide a property tax exemption for disabled veterans and/or their unmarried surviving spouses.

BACKGROUND

For the 2002-03 fiscal year, a total of 19,041 disabled veterans' exemption claims were granted. The total amount of assessed value exempt was $1,566,373,000. The following table lists the number of disabled veterans' exemptions claimed in each of the 58 counties in order of those counties with the greatest number of claims.

2002 Exemption Claims Per County

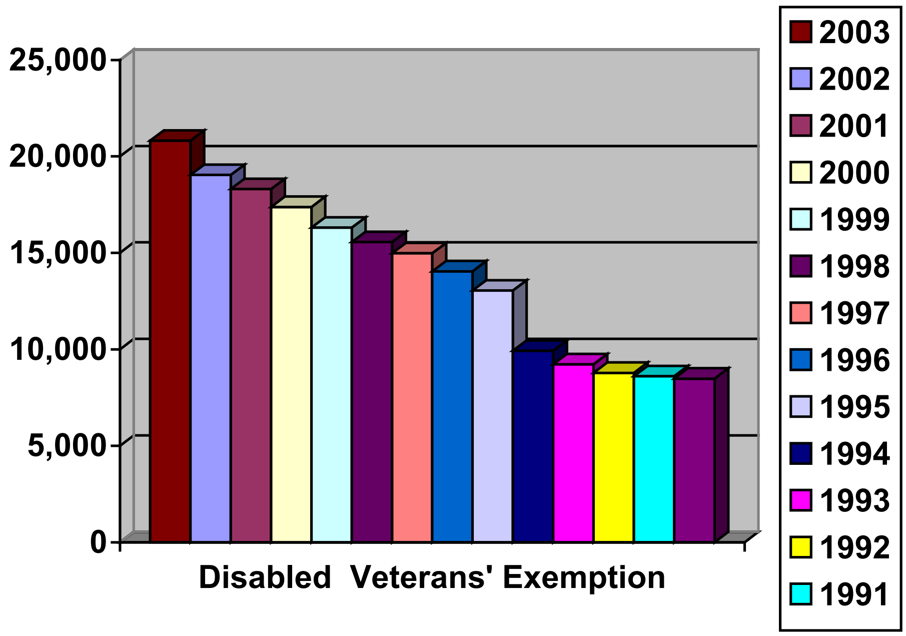
San Diego	3349	Fresno	424	Marin	174
Los Angeles	1386	Sonoma	352	Humboldt	153
Sacramento	1317	San Joaquin	328	Nevada	141
Riverside	1188	Stanislaus	300	Lake	138
Solano	1000	Kern	283	San Francisco	132
San Bernardino	975	Butte	281	Sutter	126
Orange	967	Santa Barbara	267	Mendocino	126
Monterey	766	Merced	242	Santa Cruz	118
Contra Costa	590	Placer	231	Yuba	112
Santa Clara	493	San Mateo	204	Tehama	100
Alameda	471	Tulare	199	Napa	99
Shasta	455	San Luis Obispo	178	Kings	95
Ventura	435	El Dorado	176	Madera	84

Tuolumne	68	Amador	38	Colusa	11
Calaveras	59	Plumas	33	Inyo	5
Del Norte	55	Lassen	24	Sierra	5
Yolo	54	Trinity	21	Mono	2
Siskiyou	48	San Benito	20	Alpine	1
Mariposa	42	Glenn	16		
Imperial	41	Modoc	12		

The following table and graph summarizes the growth in the number of disabled exemption claims granted from 1990 to 2003.

1990-2003 Statewide Exemption Claims

Year	Disabled Vets' Exempt
2003	20,814
2002	19,041
2001	18,308
2000	17,382
1999	16,309
1998	15,563
1997	14,982
1996	14,043
1995	13,051
1994	9,925
1993	9,226
1992	8,780
1991	8,612
1990	8,483



COMMENTS

1. **Purpose.** To increase the amount of the exemption to keep up with inflation.

2. **Key Amendments.** The June 24, 2004, amendments add co-authors and make a minor punctuation modification. The January 26, 2004, amendments delay the operative date of this bill from January 1, 2005 to January 1, 2006. The January 5, 2004 amendments delete the provisions that would have increased the exemption to $200,000 for the basic exemption and $250,000 for the low-income exemption

3. **The Exemption Amount Has Not Been Increased Since 1989.** The current exemption amounts have been in effect since 1989. In 2000, the income threshold for the low income exemption of $150,000 was increased from $24,000 to $40,000 and an automatic annual inflation factor was instituted. Currently, the income threshold is $44,302.

4. **This Bill Would Automatically Increase the Exemption Amount Each Year.** Beginning in January 1, 2006, the exemption amount would be compounded annually by an inflation factor. The same inflation measurement statistics used for increasing the income threshold level would be used, i.e., February to February of the two previous assessment years as measured by the California Consumer Price Index for all items.

5. **State Does Not Subvene Property Tax Revenue Loss from the Disabled Veterans' Exemption.** The homeowners' exemption is the only property tax exemption for which the state fully reimburses local government. The state also makes subvention payments to offset property tax reductions for open space and agricultural property that receives preferential assessment treatment under the Williamson Act at the rate of $1 per acre for non-prime land and $5 per acre for prime land.

Senate Bill 1147 (Hollingsworth) Chapter 792

Disaster Relief – Homeowners' Exemption

Effective September 25, 2004. Amends Section 218 of the Revenue and Taxation Code.

BILL SUMMARY

This bill allows persons whose homes were damaged or destroyed in the 2003 Southern California fires, the 2003 San Simeon earthquake, or the 2004 San Joaquin Delta levee break, to retain the homeowners' exemption on their property.

Sponsor: Senator Hollingsworth

LAW PRIOR TO AMENDMENT

Article XIII, Section 3(k) of the California Constitution exempts from the property tax the first $7,000 of the full value of a dwelling, as defined by the Legislature, when occupied by an owner as his principal residence. This exemption is commonly referred to as the "homeowners' exemption."

Section 218 of the Revenue and Taxation Code details the qualifications for the homeowners' exemption authorized by the constitution and provides that the exemption does not extend to a property that is vacant or is under construction on the lien date (January 1).

AMENDMENT

This bill amends Section 218 of the Revenue and Taxation Code to provide that dwellings qualified for the homeowners' exemption prior to specified disasters will not be disqualified as a "dwelling" or be denied the homeowners' exemption solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

Owner-occupied principal places of residence damaged or destroyed in the following disasters qualify:

- Those damaged or destroyed by fire or earthquake in a Governor declared disaster during the months of October, November, or December 2003 provided they qualified for the exemption prior to October 15, 2003 and have not changed ownership since October 15, 2003.

- Those damaged or destroyed by flood in a Governor declared disaster during June 2004 provided they qualified for the exemption prior to June 3, 2004 and have not changed ownership since June 3, 2004.

BACKGROUND

In two previous disasters, the Oakland/Berkeley Hills fire of 1991 and the Los Angeles civil riots of April and May 1992, legislation was enacted to extend the homeowners' exemption to damaged or destroyed homes. [Ch. 1180, Stats. 1992 (SB 1639) and Ch. 17X, Stats. 1992 (AB 38 X)].

COMMENTS

1. **Purpose.** To provide some financial relief to persons whose homes were damaged or destroyed by the 2003 Southern California fires, the 2003 San Simeon earthquake, and the 2004 San Joaquin Delta levee break.

2. **Key Amendments.** The July 8 amendment extends the provisions of this bill to owner-occupied dwellings destroyed in the San Joaquin Delta levee break. The June 28 amendments delete the income tax provisions of this bill which are contained in SB 438 (Soto). As introduced, this bill was limited to the Southern California fires that affected Los Angeles, Riverside, San Bernardino, San Diego and Ventura Counties in October and November 2003. The April 21 amendment extends its provisions to the San Simeon earthquake that affected Santa Barbara and San Luis Obispo Counties in December 2003.

3. **Homes that are uninhabitable on the lien date are technically ineligible for the exemption for the 2004-05 fiscal year under current law.** Many homes were damaged and destroyed in the Southern California fires of October and November 2003 and the San Simeon earthquake of December 2003. Consequently, those that are uninhabitable on the lien date will not qualify for the homeowners' exemption on January 1, 2004 pursuant to Section 218. Any home destroyed in the levee break of 2004 that is uninhabitable on January 1, 2005 would not be eligible for the 2004-05 fiscal year exemption.

4. **This bill allows homeowners whose residences were damaged or destroyed in the fires, earthquake, or flood to retain the exemption on their property while they are in the process of rebuilding their homes.** Some counties have reported that, as required by Section 218, they will be removing the homeowners' exemption for the January 1, 2004 lien date from properties that are no longer inhabitable as they reassess the damaged properties to provide property tax reductions due to the fire damage.

5. **Tax Levy.** In order to allow these provisions to be applicable for the January 1, 2004 lien date, and thus receive the exemption applicable for the 2004-2005 fiscal year, this measure would need to be effective immediately, as this bill provides.

Senate Bill 1820 (Machado) Chapter 794

Williamson Act

Effective January 1, 2005. Amends Sections 51283, 51283.4, and 51284.1 of, adds Section 51283.5 to, and repeals and adds Section 51203 of, the Government Code.

BILL SUMMARY

This bill creates a procedure for formally reviewing the county assessor's determination of the current unrestricted fair market value, and thereby affecting the calculation of the amount of the cancellation fee of land subject to a Williamson Act contract that is proposed for cancellation.

Sponsor: Department of Conservation

LAW PRIOR TO AMENDMENT

The State Department of Conservation (DOC) administers the Williamson Act, which provides subventions to local governments to encourage the preservation of undeveloped land through lower property tax assessments. The Williamson Act allows a landowner to sign a contract with a city or county agreeing to keep the property undeveloped for at least ten years in exchange for lower property tax assessments. Existing law makes the current fair market valuations required to determine the cancellation fee for removing land from a Williamson Act conservation contract subject to appeal to the county board of equalization. Existing law requires the county assessor to send a notice to the assessee that indicates the current fair market value of the land as though it were free of the contractual restriction and that advises the assessee of his or her right to appeal

AMENDMENT

This bill:

1. Deletes the procedure for appealing a disputed determination of current unrestricted fair market value (FMV) to the county board of supervisors meeting in the capacity of the assessment appeals board, and instead authorizes the DOC or the landowner to request a formal review by the assessor of his/her determination of FVM, and requires the assessor to either revise the valuation or confirm the accuracy of the original valuation.

2. Requires that information provided to the assessor in the formal review of the assessor's determination be disclosed to DOC and the landowner, unless required by law to be confidential.

3. States that this formal review of the valuation is the only administrative procedure for challenging a cancellation valuation.

4. Allows the assessor to recover the costs of the formal review from the party (DOC or landowner) that initiated it.

5. Authorizes DOC and the landowner to agree on a cancellation valuation that is different than the assessor's.

6. Authorizes the city or county to tentatively approve a Williamson Act contract cancellation, pending resolution of the determination of current unrestricted FMV, upon the landowner providing adequate security for payment of the full amount of cancellation fees.

IN GENERAL

Existing law provides, pursuant to the Williamson Act, incentives to landowners to conserve agricultural and open space land by allowing them to sign voluntary contracts with counties and cities, which enforceably restrict their land to agriculture, open space, and compatible uses for the next 10 years, and automatically renews Williamson Act contracts each year, so that the term is always 10 years into the future.

In return for these voluntary contracts, county assessors adjust downward the assessed value of Williamson Act contracted lands to reflect the value of their use as agriculture or open space, instead of their FMV, for purposes of property taxation.

The landowner may cancel a Williamson Act contract by giving "notice of nonrenewal", which stops the automatic annual renewals and allows the contract to expire over the next 10 years, and requires the landowner to pay to the state a cancellation fee that is equal to 12.5% of the property's unrestricted FMV.

The county assessor determines the property's current unrestricted FMV for the purpose of calculating the amount of the cancellation fee. Both the landowner and the county or city is notified of this value, and the landowner or the local government may appeal the assessor's valuation to the assessment appeals board or the county board of supervisors meeting in the capacity of the assessment appeals board, which can change the assessor’s valuation.

BACKGROUND

A $98,000 cancellation fee calculated by the Assessor of the County of Kings was appealed to the county board of supervisors, which revised the assessed valuation and reduced the fee to $11,000. DOC is litigating this matter.

In another instance, there was disagreement between DOC and the Assessor of the County of Stanislaus over cancellation procedures, and an appellate decision (*Department of Conservation* v. *Triplett* (1996) 48 Cal.App.4th 233) held that DOC had standing to challenge the county's action, but noted that DOC has no administrative remedy to contest the amount of cancellation fees and invited the Legislature to provide for DOC's participation in cases of disputed cancellation fees.

COMMENTS

Purpose. The DOC sponsored this bill to better ensure that agricultural properties subject to Williamson Act contracts are more accurately appraised for their FMV when contracts are proposed for cancellation, and the related penalty fees are paid to the state as partial reimbursement for property tax subventions paid by the state to counties. When these properties are significantly under-appraised at the local level, the state can lose substantial cancellation fee revenue. These revenues are intended to partially reimburse the state for the more than $40 million annually provided to cities and counties to make up for the reduced property tax revenue generated while a property is subject to Williamson Act restrictions.

Senate Bill 1831 (Cedillo) Chapter 407

Assessment Appeals Board Membership Qualifications

Effective January 1, 2005. Among other things, amends Sections 1623.1, 1624, 1624.05, and 1624.1 of the Revenue and Taxation Code.

BILL SUMMARY

This bill makes technical and housekeeping improvements to laws related to the eligibility requirements for assessment appeals board membership.

Sponsor: California Association of Clerks and Election Officials

LAW PRIOR TO AMENDMENT

In counties that have assessment appeals boards, the county board of supervisors follows a statutory procedure of appointing individuals to serve as board members. Members of assessment appeals boards are selected by one of two statutorily prescribed methods:

- Under Revenue and Taxation Code Section 1622, the members of a county board of supervisors nominate individuals to the board and the presiding judge of the superior court of the county selects by lot three members from among those persons nominated; or,
- Under Revenue and Taxation Code Section 1622.1, individuals are appointed directly to a board by the majority vote of the board of supervisors.

Every county that has an assessment appeals board has adopted the direct appointment method pursuant to Section 1622.1.

Revenue and Taxation Code Section 1624.05 provides that in counties with a population of 200,000 or more, a person is not eligible for nomination unless he or she meets one of the following criteria: has a minimum of five years professional experience in this state as a certified public accountant or public accountant, a licensed real estate broker, an attorney, a property appraiser accredited by a nationally recognized professional organization, or a property appraiser certified by the Office of Real Estate Appraisers.

The eligibility requirements are less stringent in counties with a population of less than 200,000. Section 1624 expands the specific eligibility requirements noted above to allow "a person who the nominating member of the board of supervisors has reason to believe is possessed of competent knowledge of property appraisal and taxation." The population estimate to use for purposes of this section is the

Department of Finance estimate prepared pursuant to Government Code Section 13073.5.

Section 1624.1 provides that individuals who worked in an assessor's office are not eligible for appointment to an assessment appeals board within three years of leaving that employment.

This bill also includes a variety of provisions making corrective and clarifying changes to tax collection laws that are sponsored by the California Association of County Treasurers and Tax Collectors. Those amendments are not discussed in this analysis as they are under the purview of the State Controller's Office.

AMENDMENT

This bill amends Section 1623.1 to cross-reference the eligibility requirements for an appeals board member with the provision of law used by counties to appoint assessment appeals board members.

This bill amends Sections 1624 and 1624.05 to specifically add a property appraiser certified by the Board of Equalization to the list of eligible property appraisers and provides that documentation of qualifying experience of members is to be filed with the clerk of the board.

This bill also amends Section 1624 to specify that the population estimate to use in determining the population of a county is the Department of Finance estimate prepared pursuant to Government Code Section 13073.5.

IN GENERAL

Section 16 of Article XIII of the California Constitution provides for the creation in each county or city and county of either a board of equalization or assessment appeals boards to equalize property assessed by the county assessor. County boards of equalization consist of the county board of supervisors sitting as an appeals board. Assessment appeals boards are comprised of persons appointed pursuant to specified provisions of the Revenue and Taxation Code.

Under current law, the elected county board of supervisors may sit as the "county board of equalization" or it may create one or more assessment appeals boards to function as the county board of equalization. There are 20 counties[4] in California where the elected board of supervisors also sits as the county board of equalization. In the remaining 38 counties, assessment appeals board members are appointed directly by majority vote of the board of supervisors. Appointments last for a term of three years and members may be reappointed an unlimited number of terms. The three-year terms are staggered to ensure a board will not be comprised of members with no prior experience. An assessment appeals board may be comprised of either

[4] Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Imperial, Inyo, Kings, Lake, Madera, Mendocino, Modoc, Napa, Plumas, San Benito, Sierra, Tehama, Trinity, and Tuolumne.

three or five members. In the case of a five-member assessment appeals board, individual appeals are heard by a three-member panel.

BACKGROUND

Related Bills. Senate Bill 1234 (Schiff, Stats. 1999, Ch. 942) tightened the assessment appeals board eligibility requirements for counties with populations in excess of 200,000. Prior to Senate Bill 1234, counties with populations of less than 1,000,000 could have a person appointed to serve on an assessment appeals board if that person possessed "competent knowledge of property appraisal and taxation" in the view of the member of the board of supervisors who was nominating the person. That is no longer an option for the majority of counties that have assessment appeals boards.

SB 1234 also added a property appraiser certified by the Office of Real Estate Appraisers to the list of persons eligible for nomination to an assessment appeals board. *(§1624, §1624.05)* The Board of Equalization previously considered these appraisers to be eligible under existing law. Thus, this provision was declaratory of existing law.

COMMENTS

1. **Purpose.** This measure is a technical and housekeeping measure. It (1) adds cross-references between related sections of code, (2) expressly includes a property appraiser certified by the Board of Equalization as fulfilling the minimum five years' professional experience that qualifies one to be eligible for nomination to the appeals board and (3) specifies the population study to use in determining whether a county has a population of less than 200,000. These provisions add clarity and specificity to the code as well as make the code more user-friendly.

2. **Key Amendments.** The June 7 amendments delete the addition of subdivision (b) to Section 1624.1 as suggested in the legislative analysis of this bill as introduced. This subdivision was deleted since it refers to provisions unrelated to the remainder of Section 1624.1.

Senate Bill 1832 (Cedillo) Chapter 194

Maps to Assessor - County Option

Effective January 1, 2005. Among other things, amends Sections 72 and 327.1 of the Revenue and Taxation Code.

BILL SUMMARY

This bill allows county board of supervisors to adopt via a "resolution" or "board order" certain provisions of law that are now only operative if an "ordinance" is adopted.

Sponsor: California Assessors' Association

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 72 authorizes county boards of supervisors to require that local agencies that approve tentative maps submit a copy of the maps to the county assessor as soon as possible after the maps are filed.

Revenue and Taxation Code Section 327.1 authorizes county boards of supervisors to require that any party that records a digital subdivision map with the county recorder also file a duplicate digital copy of that map with the county assessor.

AMENDMENT

This bill amends Revenue and Taxation Code Sections 72 and 327.1 to modify the adoption process by which a local county board of supervisors can make these provisions applicable to its county. Specifically, in addition to an ordinance, a county board of supervisors may make these provisions applicable via a resolution or board order.

BACKGROUND

Related Bills. Section 327.1 was added to the Revenue and Taxation Code by SB 2086 (SR&T, Stats. 2002, Ch. 214). Providing a digital copy of new subdivision maps eliminates the need for the Assessors' Office mapping and drafting personnel to manually redraft the map from a hard copy, and reduces the time needed to prepare the official assessor's parcel maps for new subdivisions.

The tentative map provisions of subdivision (d) of Section 72 were added to the Revenue and Taxation Code by SB 1059 (SR&T, Stats. 2003, Ch. 604). Copies of maps help the assessor determine where existing improvements on the property are located in order to assign the improvements to the proper new parcel number.

COMMENTS

1. **Purpose.** To permit a board of supervisors to additionally enact the provisions of Sections 72 and 327.1 by resolution or board order, as an alternative to adopting an ordinance. It is intended to provide counties with the option of using more expedient and less costly methods of enacting the map filing requirements of these provisions.

2. **The procedures necessary to adopt a "resolution" or "board order" are less formal and costly than those to adopt an "ordinance."** An ordinance requires a legal advertisement in an adjudicated newspaper. Such advertising can be expensive, especially for counties in urban areas. In addition, ordinances require two readings at board hearings which also add to the administrative cost of establishing these requirements.

3. **Local Option.** Given the diversity of the 58 counties in size, issues, and budgetary constraints, this bill provides a county board of supervisors with the flexibility to choose the best method of establishing these requirements for their county.

4. **The county optional requirements to provide a copy of certain maps to the assessor were recently enacted.** Obtaining a copy of the specified maps reduces the administrative cost to process necessary changes to the official assessor parcel maps and allows the maps to be updated more quickly.

Senate Bill 1880 (Committee on Revenue and Taxation) Chapter 200

Property Tax Omnibus Bill – Board of Equalization sponsored

Effective January 1, 2005. Among its provisions, amends Section 24002.5 of the Government Code and amends Sections 217, 217.1, 220.5, 533, and 5365 of, and to repeal Sections 218.1 and 5180 of the Revenue and Taxation Code.

This **Board of Equalization sponsored** omnibus property tax bill:

- Clarifies the commencement of the 30-day period in which a person elected or appointed to the office of assessor must obtain a temporary appraiser's certificate from the Board of Equalization (Board). *Government Code §24002.5*
- Eliminates the requirement for taxpayers claiming the exemption for works of art to personally appear before the assessor. *§217*
- Eliminates the requirement for taxpayers claiming the exemption for aircraft displayed in an aerospace museum to sign the claim form before a member of the assessors' office or a notary public. *§217.1*
- Eliminates the requirement for taxpayers claiming the historical aircraft exemption to sign the annual claim form before a notary public or a member of the assessor's office. *§220.5*
- Deletes a requirement that escape assessments for prior years be noted on the assessment roll and deletes related obsolete sections of law. *§533*
- Lists additional information required to be provided on the aircraft statement. *§5365*
- Repeals obsolete sections of law. *§218.1 and §5180*

Exemption Claims
Works of Art
Aerospace Museums
Historical Aircraft

Revenue and Taxation Code Section 217, 217.5, 220.5

LAW PRIOR TO AMENDMENT

Works of Art. Revenue and Taxation Code Section 217 provides a property tax exemption for specified works of art displayed in publicly owned museums or galleries and nonprofit museums. The law requires that when filing a claim and affidavit for the exemption, the claimant must sign and swear to the accuracy of the contents of the affidavit before the assessor or his or her designee.

Aerospace Museums. Revenue and Taxation Code Section 217.5 provides a property tax exemption for aircraft displayed in a publicly owned or non-profit aerospace museum. The law requires that when filing a claim and affidavit for the exemption, the claimant must sign and swear to the accuracy of the contents of the affidavit before either a notary public or the assessor or his or her designee, at the claimant's option.

Historical Aircraft. Revenue and Taxation Code Section 220.5 provides a property tax exemption for aircraft of historical significance. A one-time fee of $35 is imposed with the initial application for exemption. Thereafter, Section 255 requires that persons re-file for the exemption each year by February 15. The law requires that when filing a claim and affidavit for the exemption, the claimant must sign and swear to the accuracy of the contents of the affidavit before either a notary public or the assessor or his or her designee, at the claimant's option.

All other laws that require an exemption claim to be filed only require that the claim be signed under the penalty of perjury.

AMENDMENTS

This measure amends Sections 217, 217.1 and 220.5 of the Revenue and Taxation Code to delete the requirement that a claimant sign the form in front of a member of the assessor's office staff or a notary public and instead require only that the claimant sign the affidavit under penalty of perjury.

This amendment conforms the exemption claiming process in Sections 217, 217.1 and 220.5 as it relates to signatures to all other exemptions that require a claim to be submitted and signed.

COMMENTS

1. **Sponsor and Purpose.** The Board of Equalization is sponsoring this measure to make the annual filing process for claiming the works of art, aerospace museum, and historical aircraft exemption less burdensome and costly.

2. **Key Amendments.** The June 10 amendments added the provisions relating to the exemption filing requirements. The provisions related to the historical aircraft exemption were previously contained in SB 1877 (Senate Revenue and Taxation Committee). The provisions for works of art and aerospace museum are new amendments which were subsequently discovered after the introduction of SB 1877 and places similar burdens on taxpayers.

3. **The annual filing requirement for these exemptions require that the property owner sign the affidavit before a member of the assessor's staff.**

All other exemptions only require that the claimant sign the affidavit under penalty of perjury.

4. **The signing requirement has no constructive purpose and is unduly onerous.** To comply, taxpayers must either drive to their local assessor's office during business hours or, for those that provide an option to sign before a notary public, pay a fee to have the document notarized.

5. **Some counties do not require their taxpayers to meet this requirement given these burdens.** In practice, many county assessors' offices do not require that taxpayers sign the claim form before a notary public or a member of the assessor's staff due to the unnecessary burden and inconvenience it places on their taxpayers. However, when it is discovered in a Board audit of a county assessor's office that claims have been accepted without following this statutory requirement, the Board recommends that the county discontinue the practice given the legal requirement. Most counties subsequently comply. However, the Board agrees that the law is unduly onerous and ought to be modified.

6. **Existing claim forms prescribed by the Board currently specify that the affidavit is to be signed under the penalty of perjury.** Thus, this bill codifies the language contained in affidavits currently signed by claimants.

Escape Assessments
Revenue and Taxation Code Section 533

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 533, in part, requires that escape assessments be noted on the roll for the current assessment year. If the escape assessment is for a prior year, then a specific notation is additionally required stating the year for which the escape assessment applies and the section of code under which the escape is being made. The assessor may note the escape assessment on either the hard copy of the roll or the electronic version of the roll.

The assessment roll generally lists the assessed value of all property located in the county for a particular fiscal year. Revenue and Taxation Code Section 1602 requires that the assessment roll, or a copy thereof, be made available for inspection by all interested parties during regular office hours. Sections 109.5 and 109.6 provide that the data included in the assessment roll may be electronically maintained so that no physical document need be prepared. But the data must be stored in a manner that can be made readily available to the public in an understandable form.

AMENDMENT

This bill amends Revenue and Taxation Code Section 533 to delete the requirement that escape assessments be noted on the assessment roll. It also deletes obsolete date specific language.

BACKGROUND

Related Bills. SB 1059 (SR&T, Stats. 2003, Ch. 604) amended Section 533 to allow escape assessments to be noted on either a hard copy of the roll or an electronic copy. The reason for this amendment was that most counties have electronic assessment rolls, and it was not practical to make a specific notation on the assessment roll itself, which is basically a requirement intended for a physical paper format.

COMMENTS

1. **Sponsor and Purpose.** The California Assessors' Association is sponsoring this provision because the amendment to Section 533 in 2003 did not benefit all counties. Some counties can not modify their electronically prepared assessment roll to list a specific phrase.

2. **Key Amendments.** The June 10 amendment added these provisions which were previously contained in SB 1877 (Senate Revenue and Taxation Committee).

3. **Suggested Amendments.** Interested parties should be able to obtain information regarding escape assessment in some manner that is available to the public. Rather than eliminate both (1) the requirement to list escape assessments on the roll and (2) make a specific notation about that escape assessment, it is instead recommended that the law only require that assessors maintain this information, in some manner, that would be accessible to the public. Such an amendment would give assessors flexibility on how best to comply with this requirement within the structure of their systems and procedures. Further, because Section 534 currently references escape assessments entered on the assessment roll pursuant to Section 533, additional amendments would be needed to this section if the language related to entering escape assessments on the assessment roll is deleted.

Aircraft Property Statements
Revenue and Taxation Code Section 5365

LAW PRIOR TO AMENDMENT

General aircraft is annually reassessed each year at its current fair market value on the lien date. Revenue and Taxation Code Section 5365 requires aircraft owners to file an aircraft property statement upon request by the assessor. The statute specifies the information shall include "the make, model and year of manufacture of the aircraft." Assessors' Handbook Section 577 "Assessment of General Aircraft" provides detailed guidance on the taxation of aircraft. http://www.boe.ca.gov/proptaxes/ahcont.htm

AMENDMENT

This bill amends Revenue and Taxation Code Section 5365 to list additional information that taxpayers are required to provide on the aircraft statement.

COMMENTS

1. **Purpose.** To ensure assessors can obtain information necessary to use Board-recommended aircraft valuation guides to value aircraft in the most cost-effective manner.

2. **Key Amendments.** The June 10 amendment added these provisions which were previously contained in SB 1877 (Senate Revenue and Taxation Committee).

3. **Specific types of information about aircraft are needed to properly use commercially available aircraft value guides.** In valuing aircraft, the Board, pursuant to Section 5364, approves and recommends the use of certain commercially available aircraft valuation guides. These guides ensure uniformity in the valuation of aircraft in California for property tax purposes. However, to use the guides correctly, one must gather more data than the code currently requires. For instance, the total airframe hours, the total hours since last major overhaul, the total hours for each engine, and the engine make, model number, year of manufacture and horsepower are necessary to properly use these aircraft value guides. This bill would allow assessors to collect the necessary data from aircraft owners.

4. **While the assessor can request the required information, there is no legal obligation for the taxpayer to provide it.** If the aircraft owner does not provide the information on the property statement, then assessor would need to physically inspect the aircraft. This is administratively costly and not a productive use of resources. Section 5367 provides a 10% penalty for a taxpayer's failure to report the required data under Section 5365 as an incentive to provide the necessary information. However, the penalty only applies to information specifically listed under Section 5365.

Repeal Obsolete Sections
Revenue and Taxation Code Section 218.1 and 5180

LAW PRIOR TO AMENDMENT

Section 218.1 of the Revenue and Taxation Code makes special provisions for claiming the homeowners' exemption on property damaged in the riots of April and May of 1992.

Section 5180 of the Revenue and Taxation Code makes special provisions for local counties to create a "Validation Action Defense Trust Fund" to retain private counsel to review settlement agreements reached with state assessees for the 1991 assessment year and prior assessment years.

AMENDMENT

This bill repeals Sections 218.1 and 5180. These provisions are date specific and subsequently are obsolete.

COMMENT

Purpose. To delete two obsolete sections of the Property Taxes Law for housekeeping reasons.

Newly Elected Assessors – Temporary Certificate
Government Code Section 24002.5

LAW PRIOR TO AMENDMENT

Section 670 of the Revenue and Taxation Code provides that any person performing the duties of an appraiser for property tax purposes as an employee of either the state or any city, county, or city and county, must hold a valid appraiser's or advanced appraiser's certificate issued by the State Board of Equalization (Board). The section provides generally that certificates may be issued only to applicants who have (1) passed an examination provided by the Board and (2) demonstrated competence to perform the work of an appraiser. These provisions became applicable to elected or appointed county assessors first assuming office on or after January 1, 1997.

Section 673 of the Revenue and Taxation Code provides that new employees and newly elected or appointed assessors may obtain a *temporary* appraiser's certificate for a period of up to one year before obtaining their permanent appraiser's certificate.

Section 24002.5 of the Government Code also requires that county assessors elected or appointed after January 1, 1997 hold a valid appraiser's certificate issued by the Board and similarly allows an assessor who is newly elected or appointed to exercise the powers and duties of the office if he or she acquires a temporary appraiser's certificate "within 30 days of election or appointment."

AMENDMENT

This bill amends Section 24002.5 of the Government Code to clarify the commencement of the 30-day period within which a person elected or appointed to the office of assessor must obtain a temporary appraiser's certificate from the Board. This bill specifies that the time period to acquire the appraiser's certificate begins "no later than 30 days after taking office" rather than "within 30 days of election or appointment."

COMMENTS

1. **Purpose.** To state more precisely the 30-day period within which a newly elected or appointed assessor must obtain a temporary appraiser's certificate from the Board.

2. **Key Amendments.** The April 1 amendment added the provisions related to temporary appraiser's certificates.

3. **The time period currently specified in statute is not technically workable.** For instance, under the existing statute, for a person who is elected at either the June or November election, the 30-day period will have passed before that person officially takes office in January.

4. **Related Regulation has been updated.** The Board recently updated Property Tax Rule 282 to clarify that the 30-day period begins once the person is officially in office. This bill would update the statute.

TABLE OF SECTIONS AFFECTED

SECTIONS		BILL NUMBER	CHAPTER NUMBER	SUBJECT
Revenue & Taxation Code				
§63.1	Amend	AB 2853	Ch. 889	Parent-Child Exclusion – Million Limit
§63.1	Amend	SB 1102	Ch. 227	Parent-Child Exclusion – Million Limit
§69.4	Amend	AB 3073	Ch. 354	Environmentally Contaminated Property
§72	Amend	SB 1832	Ch. 194	Map Copies – Local Option
§100	Amend	AB 2558	Ch. 640	State Assessee Revenue Allocation
§107.4	Add	SB 451	Ch. 853	Possessory Interest – Military Housing
§205.5	Amend	SB 764	Ch. 544	Disabled Veterans Exemption Increase
§214	Amend	AB 3073	Ch. 354	Welfare - Limited Liability Companies
§214.01	Amend	AB 3073	Ch. 354	Welfare - Limited Liability Companies
§214.02	Amend	AB 3073	Ch. 354	Welfare - Limited Liability Companies
§214.5	Amend	AB 3073	Ch. 354	Welfare - Limited Liability Companies
§214.8	Amend	AB 3073	Ch. 354	Welfare - Limited Liability Companies
§214.14	Amend	AB 3073	Ch. 354	Welfare - Limited Liability Companies
§217	Amend	SB 1880	Ch. 200	Works of Art
§217.1	Amend	SB 1880	Ch. 200	Aerospace Museum
§218	Amend	SB 1147	Ch. 792	Homeowners' Exemption - Disaster
§218.1	Repeal	SB 1880	Ch. 200	Homeowners' Exemption - Disaster
§220.5	Amend	SB 1880	Ch. 200	Historical Aircraft
§327.1	Amend	SB 1832	Ch. 194	Map Copies – Local Option
§402.95	Add	AB 2846	Ch. 786	Low Income Housing – Tax Credits
§533	Amend	SB 1880	Ch. 200	Escape Assessments

Revenue and Taxation Code				
§1604	Amend	AB 2857	Ch. 768	Appeals – Two Year Period
§1623.1	Amend	SB 1831	Ch. 407	Appeal Board Membership
§1624	Amend	SB 1831	Ch. 407	Appeal Board Membership
§1624.05	Amend	SB 1831	Ch. 407	Appeal Board Membership
§1624.1	Amend	SB 1831	Ch. 407	Appeal Board Membership
§5180	Repeal	SB 1880	Ch. 200	Validation Action Defense Trust Fund
§5365	Amend	SB 1880	Ch. 200	Aircraft Property Statements
Government Code				
§24002.5	Amend	SB 1880	Ch. 200	Newly Elected Assessors
§51203	Repeal Add	SB 1820	Ch. 794	Williamson Act Cancellation
§51283	Amend	SB 1820	Ch. 794	Williamson Act Cancellation
§51283.4	Amend	SB 1820	Ch. 794	Williamson Act Cancellation
§51283.5	Add	SB 1820	Ch. 794	Williamson Act Cancellation
§51284.1	Amend	SB 1820	Ch. 794	Williamson Act Cancellation