California State Board of Equalization,
Legislative and Research Division

LEGISLATIVE BULLETIN

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

PROPERTY TAX LEGISLATION
2006

TABLE OF CONTENTS

CHAPTERED LEGISLATION ANALYSES **PAGE**

Assembly Bill 1798 (Berg) Chapter 896 3
Disaster Relief – Homeowners' Exemption

Assembly Bill 1890 (Mountjoy) Chapter 317 6
Disaster Relief – Base Year Value Transfers

Assembly Bill 2182 (Mullin) Chapter 417 9
Valuation Factors

Assembly Bill 2670 (Aghazarian) Chapter 791 13
State Assessed Railroad Property
Loading Facilities – Special Allocation

Assembly Bill 2735 (Nava) Chapter 897 19
Disaster Relief – Homeowners' Exemption

Assembly Bill 2987 (Nunez) Chapter 700 22
State Video Franchises

Assembly Bill 3076 (Committee on Revenue and Taxation) Chapter 364 25
Property Tax Omnibus Bill
Change in Ownership: Floating Homes 26
Prospective Base Year Transfers: Late Filed Claims for Propositions 60/90/110 28
Disaster Relief Applications: Assessor Prompted Notification to File 30
Offers in Compromise – Timber Yield Tax 31

Senate Bill 1317 (Torlakson) Chapter 872 32
Public Utilities – Electric Generation Facilities

Senate Bill 1400 (Kehoe) Chapter 251 39
Possessory Interest – Military Housing

Senate Bill 1607 (Machado) Chapter 224 41
Property Tax Omnibus Bill
Welfare Exemption - Occasional Users
– Limited Liability Companies 42
Veterans' Organization Exemption – Organizational Clearance Certificates 45
Section 11 Appeal Deadline 46
Grandparent-Grandchild Exclusion – Step Transaction Doctrine 47

Senate Bill 1637 (Veterans Affairs Committee) Chapter 677 48

Disabled Veterans' Exemption

Supplemental Assessments – Late Filed Claims 49

Delayed Disability Ratings 50

Portability of Disabled Veterans' Exemption 51

Social Security Numbers – Duplicate Claims 52

TABLE OF SECTIONS AFFECTED 53

Assembly Bill 1798 (Berg) Chapter 896

Disaster Relief – Homeowners' Exemption

Effective September 30, 2006. Amends Sections 218 of the Revenue and Taxation Code.

BILL SUMMARY

This bill, among other things, allows persons whose homes were damaged or destroyed as a result of severe rainstorms and related flooding and mudslides in specified counties to retain the homeowners' exemption on their property while they are in the process of rebuilding.

Sponsor: Assembly Member Berg

LAW PRIOR TO AMENDMENT

Article XIII, Section 3(k) of the California Constitution exempts from property tax the first $7,000 of the full value of a dwelling 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. Eligibility is generally continuous once granted. However, if a property is no longer owner-occupied, is vacant, or is under construction on the lien date (January 1), the property is not eligible for the exemption for the upcoming tax year.

Relevant to this bill, homes that are totally destroyed on the lien date for a particular fiscal year (that is January 1 for the forthcoming fiscal year that begins July 1) are not eligible for the homeowners' exemption. For example, a home destroyed on or before January 1, 2006 is not eligible for the homeowners' exemption on the 2006-07 property tax bill. [1]

AMENDMENT

This bill, among other things, adds subdivision (i) to Section 218 of the Revenue and Taxation Code to provide that a dwelling qualified for the homeowners' exemption prior to December 19, 2005, and subsequently damaged or destroyed in a specified disaster, will continue to be eligible for the homeowners' exemption. With respect to a dwelling that was not destroyed but was temporarily uninhabited on the lien date because of restricted access to the property due to floods, mudslides, the accumulation of debris, or washed-out or damaged roads, that dwelling would also continue to be eligible for the homeowners' exemption.

[1] A home destroyed after January 1, 2006, would continue to be eligible for the exemption on the 2006-07 property tax bill. However, if the home has not been rebuilt and occupied by the next lien date, January 1, 2007, it would not be eligible for the homeowners' exemption on the 2007-08 property tax bill.

BACKGROUND

Special purpose legislation has been enacted in recent years to provide that dwellings that were destroyed by specific disasters, as noted in the table below, 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.

Disaster	Year	Legislation
Shasta Wildfires	2005	Stats. 2005, Ch. 623 (AB 164)
Southern California Storms, Floods & Mudslides	2005	Stats. 2005, Ch. 624 (AB 18)
Southern California Storms, Floods & Mudslides	2005	Stats. 2005, Ch. 622 (SB 457)
San Joaquin levee break	2004	Stats. 2004, Ch. 792 (SB 1147)
San Simeon earthquake	2003	Stats. 2004, Ch. 792 (SB 1147)
Southern California wildfires	2003	Stats. 2004, Ch. 792 (SB 1147)
Oakland/Berkeley Hills fire	1992	Stats. 1992, Ch. 1180 (SB 1639)
Los Angeles civil riots	1991	Stats. 1992, Ch. 17X (AB 38 X)

COMMENTS

1. **Purpose.** The author is sponsoring this measure to provide some financial relief to persons whose homes were damaged or destroyed as a result of severe rainstorms and related flooding and mudslides.

2. **Key Amendments.** The **August 23** amendments added the County of Mariposa to the list of eligible counties. The **June 12** amendments added the phrase "was temporarily damaged or destroyed or was being reconstructed by the owner, or" in Section 218 to correct a typographical error as noted in the prior analysis. The amendments also doubled joined this bill to AB 2735 (Ch. 897, 2006, Nava) and reversed the April 20 amendment regarding the first date of eligibility. The **April 20** amendments modified the date of first eligibility from December 19 to December 17 and limited other provisions of this bill unrelated to the homeowners' exemption to the 7 counties that were declared to be in state of emergency on January 2. The counties that have been deleted will be covered by another bill, AB 2735 (Nava). The **February 14** amendments modified the dates of eligibility.

3. **In January 2006 the Governor issued three proclamations declaring a total of 34 counties to be in a state of emergency (i.e., a disaster declared by the Governor)**.

   - January 2: Del Norte, Humboldt, Mendocino, Napa, Sacramento, Sonoma, and Trinity. (7 counties)
   - January 3: Butte, El Dorado, Lake, Lassen, Marin, Nevada, Placer, Plumas, San Joaquin, San Mateo, Sierra, Siskiyou, Solano, Sutter, Yolo, and Yuba. (16 counties)
   - January 12: Alameda, Alpine, Amador, Colusa, Contra Costa, Fresno, Kings, San Luis Obispo, Santa Cruz, Shasta, and Tulare. (11 counties)

In April 2006 the Governor issued two more proclamations due to rains that started on March 29.

- April 10: Amador, Calaveras, Fresno, Merced, San Joaquin, San Mateo, and Stanislaus. (7 counties)
- April 13: Alameda, El Dorado, Kings, Marin, Santa Cruz, Sonoma, Tulare, and Tuolumne. (9 counties)

On June 5, 2006 the Governor issued a proclamation for Mariposa County due to a landslide from the severe weather conditions that began in March and April.

4. **This bill would allow homeowners whose residences were damaged or destroyed as a result of the disasters to retain the exemption on their property while they are in the process of rebuilding their homes.** Homes that are uninhabitable on the lien date (January 1) are technically ineligible for the exemption for the upcoming fiscal year under current law.
5. **Homeowners' Exemption – Disaster Impact.** The Board staff has opined that a temporary absence from a dwelling because of a natural disaster, such as a flood or fire, will not result in the loss of the homeowners' exemption for those properties temporarily vacated for repairs. (See Letter To Assessors 82/50, Question G16) However, when a dwelling has been totally destroyed, staff has opined that because no dwelling exists there is no occupancy or possibility of occupancy on the lien date and the property would not be eligible for the exemption even if the property was under construction. (See Property Tax Annotation 505.0019 "Homeowners' Exemption – Disaster Impact") Referenced documents available at www.boe.ca.gov select "Property Tax."
6. **Governor's Signing Message on Special Purpose Legislation.** The Governor included a signing message in last year's AB 18 (Ch. 624, Stats. 2005) requesting that standard purpose legislation be enacted to avoid the need to introduce special purpose legislation each year.
7. **Related Bills.** AB 2735 (Ch. 897, 2006, Nava) makes identical amendments to Section 218, while other provisions of AB 2735 are limited to certain counties. However, both bills are now double-joined. AB 3039 (Houston) and SB 1607 (Machado) also proposed to amend Section 218 to make these provisions standard for all Governor declared disasters without the need for special purpose legislation. However, neither bill passed the Legislature with these provisions included.

Assembly Bill 1890 (Mountjoy) Chapter 317

Disaster Relief – Base Year Value Transfers

Effective September 18, 2006. Amends Section 69 of the Revenue and Taxation Code.

BILL SUMMARY

This bill increases from three years to five years the timeframe a property owner has to acquire or construct a property to replace one damaged or destroyed in a Governor declared disaster and remain eligible to receive a base year value transfer.

Sponsor: Assembly Member Mountjoy

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 69 provides tax relief to persons who own property substantially damaged or destroyed in a Governor declared disaster. Among the various requirements and conditions, the base year value of the damaged property may be transferred to a comparable property within the same county within three years of the date the disaster occurred.

AMENDMENT

This bill amends Revenue and Taxation Code Section 69 to extend the number of years to acquire a replacement property from three to five years for disasters occurring on or after July 1, 2003.

IN GENERAL

California's system of property taxation under Article XIII A of the State Constitution (Proposition 13) values property at its 1975 fair market value, with annual increases thereafter limited to the amount of inflation or 2%, whichever is less, until the property changes ownership or new construction occurs. Once a reassessable event occurs, (i.e., a change in ownership or new construction) the value of the property for tax purposes is redetermined based on its current market value. The value initially established, or redetermined where appropriate, is referred to as the "base year value."

Because real estate values generally appreciate at a rate greater than 2% per year, when an event occurs triggering a reassessment of property to its current market value, the reassessed value (i.e., its new base year value) will likely be substantially higher.

California property tax law provides for various situations where the base year value of a property is either: (1) retained, notwithstanding that new construction has taken place or that the property has changed ownership, or (2) transferred to another property, notwithstanding that the property has changed ownership. These special situations are provided pursuant to various constitutional amendments modifying the original Proposition 13 framework and serve to avoid the otherwise required reassessment of a property to its current market value.

For instance, related to the subject matter of this bill, Revenue and Taxation Code Section 70(c) provides that where property has been damaged or destroyed by a misfortune or calamity, the property will retain its previous assessed value after its reconstruction. Consequently, a property that is rebuilt after a fire will continue to be assessed at the same amount even though the property has been entirely newly constructed. (This new construction exclusion was provided by Proposition 8 in 1978)

Specifically related to this bill, Section 69 provides that persons who own property substantially damaged or destroyed in a Governor-declared disaster may transfer the base year value of that property to a property acquired or constructed as a replacement if it is acquired within three years after the disaster. "Substantially damaged" means physical damage amounting to more than 50 percent of its current market value immediately prior to the damage. Base year value transfers are available for all property types; with the limitation that the original property and the replacement property must be of the same property *type*: residential, commercial, agricultural, or industrial. The replacement property is "comparable" if it is similar in size, utility, and function to the destroyed property, and if the market value of the acquired property does not exceed 120% of the fair market value of the replaced property in its pre-damaged condition. Property owners may, nevertheless, still receive the disaster relief in cases where the value of the replacement property exceeds the 120% limitation. In such cases, the amount over this threshold is assessed at full market value and added to the transferred base year value. (Proposition 50 of 1986 authorized this base year value transfer provision.)

Section 69.3 provides similar disaster base year value transfer provisions but, unlike Section 69 which applies to all property types, it is limited to principal places of residences purchased in another county and only applies to homes purchased in counties where the board of supervisors has adopted an ordinance making this benefit available. Currently, only eight counties extend this relief to displaced homeowners who previously lived in another county: Contra Costa, Los Angeles, Modoc, San Francisco, Santa Clara, Solono, Sutter and Ventura. (Proposition 171 in 1995 authorized this base year value transfer provision.)

BACKGROUND

In 1993, AB 1824 (Stats. 1993, Ch. 1053) extended the timeframe for Section 69 base year value transfers from 2 years to 3 years for all disasters occurring on or after October 20, 1991, the date of the Oakland hills fire. In 1997, SB 594 (Stats. 1997, Ch. 941) provided a special five year timeframe for any victim of the 1994 Northridge earthquake.

COMMENTS

1. **Purpose.** The author is sponsoring this bill to ensure that affected property owners have sufficient time to acquire a suitable replacement property.
2. **Base year value transfers provide tax relief to disaster victims.** Permitting a person to "transfer" their base year value from one property to another property provides tax relief by allowing the property owner to continue paying taxes on the replacement property equivalent to that paid on the property from which they were displaced. Without a base year value transfer, the taxes on the new property would likely be significantly more because, under the general change in ownership laws, the taxes would be based on the property's current fair market value. The rationale

for providing a base year value transfer is that the tax laws should not further afflict disaster victims by imposing upon them higher property taxes. If the disaster had not occurred, those individuals would not have been compelled to relocate and thereby forfeit their Proposition 13 protected base year values.

3. **The three year timeframe is a statutory limitation.** The constitution provides that the Legislature shall provide for these base year value transfers and Section 69 is the implementing statute. Article XIII A, Section 2(e) of the California Constitution does not expressly authorize the Legislature to establish time requirements for acquiring a replacement property within the same county. It may be more appropriate to establish time periods that do not unnecessarily exclude taxpayers from receiving the benefits otherwise available. A more liberal time period could prevent constitutional challenges to establishing any time limit.
4. **Should the 120% threshold be increased to reflect the five year timeframe?** Under current law, a straight base year value transfer is allowed if the market value of the acquired property does not exceed 120% of the fair market value of the replaced property in its pre-damaged condition. If the value of the replacement property exceeds the 120% limitation, then the amount over this threshold is assessed at full market value and added to the transferred base year value. The author may wish to consider increasing the value threshold for an acquisition in the fourth or fifth year.
5. **Three years is not always enough time.** While most property owners will likely fit into the existing three year period, the financial impact to the individual property owner that doesn't can be significant. Delays occur for a variety of reasons: unsettled insurance claims, uninsured or underinsured property owners, limited supply of replacement properties available for purchase, and lack of construction workers. This is especially true where the disaster creates mass destruction in a localized area.
6. **This bill does not amend the three year timeframe for Section 69.3 base year value transfers because of constitutional constraints.** Section 69.3 provides similar tax relief for replacement principal places of residence located in a different county. However, the three year limit is expressly specified in the constitutional provision authorizing these transfers. Consequently, to extend this timeframe would require a constitutional amendment.

Assembly Bill 2182 (Mullin) Chapter 417

Valuation Factors

Effective January 1, 2007. Adds Section 401.20 to the Revenue and Taxation Code.

BILL SUMMARY

Contingent upon a budget appropriation, this bill (1) requires the Board of Equalization (Board) to conduct a study to update the information upon which the Board's published annual valuation factors are based for nonproduction computers, semiconductor manufacturing equipment, and biopharmaceutical industry equipment and fixtures and (2) provides that the values determined when using these valuation factors are rebuttably presumed to be the full cash value of the property.

Sponsor: Board of Equalization

LAW PRIOR TO AMENDMENT

Section 15606 of the Government Code requires the Board to "[p]repare and issue instruction to assessors designed to promote uniformity throughout the state and its local taxing jurisdictions in the assessment of property for the purposes of taxation."

In addition, and more specifically, Section 401.5 of the Revenue and Taxation Code requires the Board to issue data to assessors relating to the costs of property and other information that will promote uniformity in appraisal practices and in assessed values throughout the state.

The Board complies with these requirements, in part, by issuing various Assessors' Handbooks. With respect to business personal property assessments, the Board annually publishes Assessors' Handbook Section 581, Equipment Index and Percent Good Factors *(AH 581)*. This handbook section contains several tables of equipment index factors, percent good, and valuation factors that aid in the mass appraisal of various types of personal property and fixtures. It also contains specific valuation factors for three classes of property:

- "Computer Valuation Factors" (Table 7),
- "Semiconductor Manufacturing Valuation Factors" (Table 8), and
- "Interim Valuation Factors for Biopharmaceutical Industry Equipment and Fixtures" (Table 9).

The 2006-07 Governor's Budget provides funding for the Board to undertake a study related to property falling within the three categories listed above. Current statutory law is silent as to specific valuation procedures for these types of property.

AMENDMENT

This bill is a companion measure to the 2007-08 budget funding to conduct the valuation factor study for the three classes of property. Once the study is complete, the Board will reflect its findings in the valuation factor tables published in the next annual publication of the AH 581.

This bill adds Section 401.20 to the Revenue and Taxation Code to establish a rebuttable presumption that when an assessor uses these updated valuation factors, the resulting values will be rebuttably presumed to be the full cash value of these three classes of property. In addition, this bill would specify that either the assessor or the taxpayer have the right to present evidence supporting values different from those based on the valuation factors in order to attempt to overcome the presumption.

To ensure that the presumption of correctness is not extended to assessments based upon dated studies in the future, the presumption will expire 6 years after the most recent study leading to the development of new factors.

IN GENERAL

Business Personal Property. Personal property used in a trade or business is generally taxable, and its cost must be reported annually to the assessor on a business property statement, as provided by Revenue and Taxation Code Section 441.

Personal property is not subject to the valuation limitations of Proposition 13. Personal property is valued each lien date at current fair market value. However, it is not administratively possible to annually determine the fair market value of every item of personal property used by all of the businesses in California. Consequently, mass appraisal techniques are necessary to complete the annual reassessment process.

The Board annually publishes AH 581, which contains several tables of equipment index, percent good, and valuation factors that aid in the mass appraisal of various types of personal property. With respect to the subject of this bill, special valuation factor tables are specifically provided for nonproduction computers, semiconductor equipment, and biopharmaceutical industries.

Valuation Process. Generally, the valuation of personal property is based on the acquisition cost of the property. The acquisition cost is multiplied by a price index, an inflation trending factor based on the year of acquisition, to provide an estimate of its reproduction cost new. The reproduction cost new is then multiplied by a depreciation index, also called percent good tables, to provide an estimate of the depreciated reproduction cost of the property (reproduction cost new less depreciation). The reproduction cost new less depreciation value becomes the taxable value of the property for the fiscal year. The mathematical process is slightly different, in that it is more simplified, for the three classes that are the subject of this bill because the "valuation factors" include both the effect of price changes (index or trend) and depreciation. For these classes, the acquisition cost is directly multiplied by the valuation factors to provide an estimate of reproduction cost less depreciation. To illustrate the valuation process, an example is shown below.

Equipment Group	Year Acquired	Cost	Valuation Factor	Reproduction Cost Less Depreciation
Mid-range Computer	2003	$25,000	.30	$7,500

In this example, for property tax purposes, the assessed value of a mid-range computer acquired new in 2003 at a cost of $25,000 would be $7,500 for the 2006-07 tax year.

COMMENTS

1. **Purpose.** This bill is sponsored by the Board to ensure the development of objective and defensible valuation factors that will result in more accurate assessments as well as promote uniformity in the assessment of these property types. This bill is intended to help resolve ongoing disputes in California concerning the proper assessment of this type of property by establishing a presumption of correctness when the resulting valuation factors are used.

2. **The studies used to develop the valuation factors are dated.** The validity of the current valuation factors is increasingly being challenged, giving rise to costly and time consuming assessment appeals. Concern has been expressed by both industry and local assessing officials that the valuation factors currently published by the Board are based upon outdated studies. These types of property have undergone rapid technological change and are more advanced. Consequently, more data should now be available than when the tables were first developed. The semiconductor tables were developed in 1994, the computer tables in 1995, and the biopharmaceutical tables in 1999.

3. **The cost of the study is $264,000 and the Governor's budget provides the necessary funding**. The Senate and Assembly approved this funding, and both industry and assessing officials are supportive of undertaking new studies to develop updated valuation factors.

4. **Mass appraisal techniques are necessary in the assessment of business personal property because it is administratively impossible to annually determine the fair market value of every item of personal property used in all businesses in California**. Basing the annual personal property assessment on acquisition cost multiplied by a valuation factor is a necessary administrative practicality and, when used properly, this bill would bestow a presumption of correctness as to the resulting value. This bill would specify that either the assessor or the taxpayer have the right to present evidence supporting values different from those based on the published valuation factors in order to attempt to overcome the presumption. If either the assessor or the taxpayer presents evidence supporting values different than those based on the published factors, then that party would bear the burden of proof. The rebuttable presumption would allow exceptions be dealt with on an individual basis, and values could be altered from that determined by the mathematical computation.

5. **Specific statutory direction would promote statewide uniformity and help resolve disputes between assessing officials and taxpayers.** Current statutory law is silent as to specific valuation procedures for these types of property. Establishing a presumption of correctness when the valuation factors are followed is intended to ensure that the valuation factors developed will be ultimately used. The assessor has the presumption of correctness only if the value determination is made using the valuation factors. Allowing the presumption to be rebutted serves two purposes: (1) allowing better data to prevail, and (2) avoiding any unconstitutional claims if use of the factors were mandated. Statutory direction and guidance would serve to avoid costly and time-consuming duplicative appeals and litigation at the local level.

6. **Similar Legislation.** Similar issues related to the assessment of other specific property types that have been highly controversial were resolved via specific legislative direction such as this bill provides. For instance, last year, AB 964 (Ch. 699, Stats. 2005, J. Horton), related to the taxation of commercial air carriers, provided that if a particular assessment methodology is followed, the resulting value is reflective of fair market value. In prior years, legislation has been enacted to establish a rebuttable presumption of correctness when a particular methodology is used for various types of property, specifically: cable TV assessments (AB 3234, Ch. 1630, Stats. 1988); intercounty pipeline land assessments (SB 2106, Ch. 801, Stats. 1996); airport assessments (AB 2318, Ch. 85, Stats. 1998); and commercial air carrier assessments (AB 1807, Ch. 86, Stats. 1998).

Assembly Bill 2670 (Aghazarian) Chapter 791

State Assessed Railroad Property
Loading Facilities - Special Allocation

Effective January 1, 2007. Amends Sections 100, 755, and 756 of, amends and repeals Section 100.1 of, and adds Section 100.11 to, the Revenue and Taxation Code.

BILL SUMMARY

This bill converts the property tax assessment and revenue allocation procedures for state assessed unitary railroad property to the countywide system used for all other state assessed properties.

Additionally, for certain loading facilities newly built by a railroad company, it provides that 20% of the cost of a qualifying facility be allocated to the tax rate area where the facility is located so that a greater share of the resulting revenue is dedicated to the governmental entities providing services to the property.

Sponsor: California Railroad Industry

LAW PRIOR TO AMENDMENT

Under existing law, the unitary property of regulated railroad companies is reported, the value of the property is allocated, and the resulting revenue is distributed according to the “tax rate area” where the property is located. A tax rate area is a specific geographical area within a county wherein each parcel is subject to the taxing powers of the same combination of taxing agencies. Statewide there are nearly 58,000 tax rate areas.

All other state assessed unitary property is reported, assessed, and allocated to a special “countywide” tax rate area. The Board of Equalization (Board) allocates state assessed unitary values to a single countywide tax rate area in each county where the assessee has property. A special countywide tax rate is applied to the assessed value of this property. Statutory formulas are then used to allocate taxes to the numerous local agencies in the county. (See Revenue and Taxation Code Section 100)

AMENDMENT

This bill allows railroad companies to report their unitary property holdings by county, rather than by individual tax rate area. It additionally allows the Board to allocate unitary values by county, rather than by tax rate area. A second special countywide tax rate area will be established for purposes of allocating the assessed value of property of a regulated railway company. Therefore, two countywide tax rate areas will exist; one for state assessee unitary property other than railroads under existing Section 100(a), and another for railroad unitary property under new Section 100.1(a)(2)(A). This bill also requires the county auditor to make special allocations of the resulting revenues as specified.

This bill also provides that 20 percent of the value of a qualified facility, as defined, will be allocated exclusively to the specific tax rate where the property is located and require the county auditor to make special allocations of the resulting revenues.

IN GENERAL

State Assessed Property. Article XIII, Section 19 of the California Constitution requires the Board to assess property owned or used by regulated railroad companies. It also requires the Board to assess the property owned by certain public utilities. These properties are commonly referred to as "state assessed" properties because the Board, rather than the local county assessor, is responsible for determining the value of the property for property tax purposes. However, counties are responsible for billing, collecting, and apportioning the resulting taxes. These functions are the responsibility of the county auditor and the county tax collector.

Unitary Property. A state assessee's property holdings are valued as a single unit and the total value is subsequently allocated among the counties.

Generally, state assessed properties operate as an integrated unit and often cross county boundaries. Property owned or used by a state assessee that is used in the company's primary operations as part of the company's integrated system is assessed as "unitary property" and the company is valued as a single unit under the principal of unit valuation. A "unit valuation" of a public utility company or a railroad company captures the value of the company's property as a system of interrelated assets, rather than a valuation of individual components of land, buildings, and other assets.

For these companies, value depends on the interrelation and operation of the entire public utility or entire railroad. For instance, there would be little worth to one section of railroad track or one section of an electrical transmission line; rather their value depends on being a part of an integrated system.

Property Tax Revenue Allocation

Locally Assessed Property. Generally, property tax revenues from locally assessed property are allocated by situs of the property and accrue only to the taxing jurisdictions in the tax rate area where the property is located. A tax rate area is a specific geographical area within a county wherein each parcel is subject to the taxing powers of the same combination of taxing agencies.

State Assessed Property. Under current law, the allocation procedures for property tax revenues derived from state assessed property are different than those for locally assessed property. The revenue allocation system for state assessed unitary property, with the exception of railroad unitary property, was established by legislation enacted in 1986 via AB 2890 (Stats. 1986, Ch. 1457). Prior to the 1988-89 fiscal year, the property tax revenues from state and locally assessed property were allocated in the same manner – by tax rate area. However, the process of identifying property according to tax rate area had become overwhelming for state assessees. As a result, AB 2890 was enacted to allow state assessees to report their unitary property holdings by county, rather than by individual tax rate area. It also allowed the Board to allocate unitary values by county, rather than by tax rate area. This change allowed state assessees to receive only one tax bill per county for their unitary property holdings. Previously, each state assessee received hundreds of property tax bills from each county where they owned unitary property because a separate tax bill was prepared for each tax rate area where property was physically located.

Essentially, AB 2890 established a prescribed formula, performed by the county auditor. The results of AB 2890 are as follows:

1. Preserves each local agency's 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.
2. Thereafter, annually increases each local agency's "unitary base" by two percent (provided revenues are sufficient).
3. If there is any property tax revenue remaining after each local agency has been distributed their "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.
4. "Incremental growth" revenues are shared with all jurisdictions in the county (i.e., county wide distribution) in proportion to the entity's share of property tax revenues derived from locally assessed property.
5. It is often stated that all state assessee revenue is shared "countywide," but this is not technically true. In essence, it is only incremental growth that is distributed "countywide" without regard to where the growth in value took place or where new construction occurred.

By establishing unitary bases, jurisdictions were held harmless by the allocation system established by AB 2890 and some jurisdictions (those with little or no state assessed property located in their jurisdictional boundaries prior to AB 2890) have since benefited from the countywide system established for sharing the incremental growth.

Legislation has been enacted to establish situs-based revenue allocations for certain stand-alone state assessed properties that were newly constructed after the countywide system was established. Hence, the property tax revenues derived from these proposed projects 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			
Unitary Property	Pre-1987 values: Situs Based Incremental Growth: Countywide	Section 100	AB 2890 (1986)
Operating Nonunitary Property	Countywide	Section 100	AB 2890 (1986)
Nonunitary Property	Situs Based	Section 755 & 756	
Railroad Unitary Property	Situs Based	Section 100.1, 755 & 756	
Railroad Nonunitary Property	Situs Based	Section 755 & 756	
Merchant Power Plants	Situs Based	Section 100.9	AB 81 (2002)
Select Stand Alone Properties	Situs Based	Section 100(i), (j), and (k)	AB 454 (1987) SB 53 (1991) AB 2558 (2004)

BACKGROUND

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. AB 2890 by Assembly Member Hannigan in 1986 created the countywide system. According to the author's press release on that bill, the Assembly Revenue and Taxation Committee had held an interim hearing in the Fall of 1985 on property tax issues that resulted 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 countywide 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 countywide system. That analysis noted:

> 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.

COMMENTS

1. **Purpose.** This bill is sponsored by the California Railroad Industry to simplify the administration and distribution of the property tax as it applies to unitary railroad property, and to be consistent with all other state assessed unitary property.
2. **Key Amendments.** The **August 22** amendment double joined this bill to SB 1317 which also proposes amendments to Section 100 of the Revenue and Taxation Code. The **August 7** amendments corrected issues noted in prior analyses with the operative dates of the changeover to the new system. The **June 22** amendments delayed the operative date to the beginning of the 2007-08 fiscal year. It would not have been possible for the Board to make these provisions effective with the 2006-07 fiscal year since these assessments would have been already made by the time this bill was enacted.
3. **The countywide system.** Under current law**,** incremental growth in property tax revenues from state assessed unitary property, except railroads, occurring post-1987 is shared on a “countywide" basis. Additional revenues could be the result of increased property values, new construction or 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. Under the countywide system all entities receive a share in the revenues from unitary properties regardless of whether any of the value growth actually occurred within its jurisdictional boundaries.

4. **Railroads are an exception to this general process.** The assessed value of unitary railroad company property, unlike the unitary value of other public utility property, is allocated to individual tax rate areas, not the general countywide tax rate.
5. **Railroads were not included in the countywide system established in 1986 at the request of that industry.** Since then, railroads have also become overwhelmed with the administrative complexities of reporting unitary property at the micro tax rate area level and would like the benefits of the countywide system.
6. **This analysis is limited to the functions of the Board.** This analysis does not address any issues county auditors may have related to their duties in implementing the special revenue allocation provisions required by this bill.
7. **This bill would allow railroads to receive only one tax bill per county for their unitary property holdings**. Additionally, counties would only have to prepare and process one tax bill per railroad company for their unitary property holdings.
8. **This bill would allow the Board to discontinue value allocation by tax rate area.** This process utilizes approximately 60 hours per year of staff time which would be redirected to accommodate other workloads within the program.

Assembly Bill 2735 (Nava) Chapter 897

Disaster Relief – Homeowner's Exemption

Effective September 30, 2006. Amends Section 218 of the Revenue and Taxation Code.

BILL SUMMARY

This bill, among other things, allow persons whose homes were damaged or destroyed as a result of wildfires and severe rainstorms and related flooding and mudslides in specified counties to retain the homeowners' exemption on their property while they are in the process of rebuilding.

Sponsor: Assembly Member Nava

LAW PRIOR TO AMENDMENT

Article XIII, Section 3(k) of the California Constitution exempts from property tax the first $7,000 of the full value of a dwelling 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. Eligibility is generally continuous once granted. However, if a property is no longer owner-occupied, is vacant, or is under construction on the lien date (January 1), the property is not eligible for the exemption for the upcoming tax year.

Relevant to this bill, homes that are totally destroyed on the lien date for a particular fiscal year (that is January 1 for the forthcoming fiscal year that begins July 1) are not eligible for the homeowners' exemption. For example, a home destroyed on or before January 1, 2006 is not eligible for the homeowners' exemption on the 2006-07 property tax bill. [2]

AMENDMENT

This bill, among other things, adds subdivisions (i) and (j) to Section 218 of the Revenue and Taxation Code to provide that a dwelling qualified for the homeowners' exemption that was damaged by certain disasters, as specified, will continue to be eligible for the homeowners' exemption. With respect to a dwelling that was not destroyed but was temporarily uninhabited on the lien date because of restricted access to the property due to the disaster, that dwelling would also continue to be eligible for the homeowners' exemption. Eligible properties include:

Storms, Floods, and Mudslides. Any dwelling that qualified for the exemption prior to December 19, 2005, and which was subsequently damaged or destroyed by

[2] A home destroyed after January 1, 2006, would continue to be eligible for the exemption on the 2006-07 property tax bill. However, if the home has not been rebuilt and occupied by the next lien date, January 1, 2007, it would not be eligible for the homeowners' exemption on the 2007-08 property tax bill.

severe rainstorms, floods, mudslides, or the accumulation of debris in a disaster for which the Governor issued a proclamation of a state emergency in January, April, May or June of 2006.

Wildfires. Any dwelling that qualified for the exemption prior to July 9, 2006, and which was subsequently damaged or destroyed by wildfires in San Bernardino County for which the Governor issued a proclamation of a state emergency in July 2006.

BACKGROUND

Special purpose legislation has been enacted in recent years to provide that dwellings that were destroyed by specific disasters, as noted in the table below, 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.

Disaster	Year	Legislation
Shasta Wildfires	2005	Stats. 2005, Ch. 623 (AB 164)
Southern California Storms, Floods & Mudslides	2005	Stats. 2005, Ch. 624 (AB 18)
Southern California Storms, Floods & Mudslides	2005	Stats. 2005, Ch. 622 (SB 457)
San Joaquin levee break	2004	Stats. 2004, Ch. 792 (SB 1147)
San Simeon earthquake	2003	Stats. 2004, Ch. 792 (SB 1147)
Southern California wildfires	2003	Stats. 2004, Ch. 792 (SB 1147)
Oakland/Berkeley Hills fire	1992	Stats. 1992, Ch. 1180 (SB 1639)
Los Angeles civil riots	1991	Stats. 1992, Ch. 17X (AB 38 X)

COMMENTS

1. **Purpose.** The author is sponsoring this measure to provide some financial relief to persons whose homes were damaged or destroyed as a result of severe rainstorms and related flooding and mudslides.
2. **Key Amendments.** The **August 28 amendments** added provisions for the San Bernardino fires. The **August 23 amendments** added the county of Mariposa to the list of eligible counties. The **June 13 amendments** double joined this bill to AB 1798 (Ch. 896, 2006, Berg), a similar bill that provides assistance to other counties. **The April 20 amendments** added disasters occurring in April 2006 and limited other provisions of this bill unrelated to the homeowners' exemption to only certain counties. The counties that have been deleted will be covered by another bill, AB 1798 (Berg).
3. **In January 2006 the Governor issued three proclamations declaring a total of 34 counties to be in a state of emergency (i.e., a disaster declared by the Governor)**.
    - January 2: Del Norte, Humboldt, Mendocino, Napa, Sacramento, Sonoma, and Trinity. (7 counties)

- January 3: Butte, El Dorado, Lake, Lassen, Marin, Nevada, Placer, Plumas, San Joaquin, San Mateo, Sierra, Siskiyou, Solano, Sutter, Yolo, and Yuba. (16 counties)
- January 12: Alameda, Alpine, Amador, Colusa, Contra Costa, Fresno, Kings, San Luis Obispo, Santa Cruz, Shasta, and Tulare. (11 counties)

In April 2006 the Governor issued two more proclamations due to rains that started on March 29.

- April 10: Amador, Calaveras, Fresno, Merced, San Joaquin, San Mateo, and Stanislaus. (7 counties)
- April 13: Alameda, El Dorado, Kings, Marin, Santa Cruz, Sonoma, Tulare, and Tuolumne. (9 counties)

On June 5, 2006 the Governor issued a proclamation for Mariposa County due to a landslide from the severe weather conditions that began in March and April.

On July 13, 2006 the Governor issued a proclamation for San Bernardino County due to wildfires that started July 9.

4. **This bill would allow homeowners whose residences were damaged or destroyed as a result of these disasters to retain the exemption on their property while they are in the process of rebuilding their homes.** Homes that are uninhabitable on the lien date (January 1) are technically ineligible for the exemption for the upcoming fiscal year under current law.
5. **Homeowners' Exemption – Disaster Impact.** The Board staff has opined that a temporary absence from a dwelling because of a natural disaster, such as a flood or fire, will not result in the loss of the homeowners' exemption for those properties temporarily vacated for repairs. (See Letter To Assessors 82/50, Question G16) However, when a dwelling has been totally destroyed, staff has opined that because no dwelling exists there is no occupancy or possibility of occupancy on the lien date and the property would not be eligible for the exemption even if the property was under construction. (See Property Tax Annotation 505.0019 "Homeowners' Exemption – Disaster Impact") Referenced documents available at www.boe.ca.gov select "Property Tax."
6. **Governor's Signing Message on Special Purpose Legislation.** The Governor included a signing message in last year's AB 18 (Ch. 624, Stats. 2005) requesting that standard purpose legislation be enacted to avoid the need to introduce special purpose legislation each year.
7. **Related Bills.** AB 1798 (Ch. 896, 2006, Berg) makes identical amendments to Section 218, while other provisions of AB 1798 are limited to certain counties. However, both bills are now double-joined. AB 3039 (Houston) and SB 1607 (Machado) also proposed to amend Section 218 to make these provisions standard for all Governor declared disasters without the need for special purpose legislation. Those provisions were not passed by the Legislature.

<u>Assembly Bill 2987 (Nunez) Chapter 700</u>

State Video Franchises

Effective January 1, 2007. Among other things amends 107.7 of the Revenue and Taxation Code and adds uncodified legislative intent language.

BILL SUMMARY

Creates a mechanism for a state-issued franchise for the provision of cable and video service in California. Specifies that any cable service provider that switches from a local issued franchise to a state issued franchise will continue to benefit from the provisions of Section 107.7.

Sponsor: Assembly Members Nunez and Levine

LAW PRIOR TO AMENDMENT

Existing law, authorizes local governments to grant additional cable television franchises in an area where a franchise has already been granted after a public hearing to discuss specified issues.

Revenue and Taxation Code Section 107.7 establishes a preferred valuation method for a cable television system's taxable possessory interests and confirms entitlement to reliance upon the "presumption of correctness" when the assessor uses that method. Use of the preferred method is not mandated. Rather, it is merely a preference that is rewarded with the "presumption of correctness." Section 107.7 does not prohibit the use of any particular valuation method. Under Section 107.7, in order for an assessment to utilize the "presumption of correctness," the assessor must value cable television system taxable possessory interests using the income approach and using a portion of the annual cable television franchise fee as the economic (market) rent attributable to the taxable possessory interests. Section 107.7 does not prohibit the use of other valuation methods or the use of an economic rent that is not a portion of the franchise fee, but if the provisions of the section are not followed, the assessment's presumption of correctness is lost.

AMENDMENT

This bill provides that the Public Utilities Commission (PUC) is the sole franchising authority for the state-issued authorization to provide cable and video service (video service). The PUC must begin accepting applications for state-issued franchises by April 1, 2007. As of January 1, 2008, all video service providers must seek a state franchise instead of a local franchise.

The bill provides that a state franchise shall be valid for 10 years, at which point the holder must renew the franchise if it chooses to continue to offer video service in this state.

It also requires the holder of a state franchise to pay rent to each local entity where it provides video service a franchise fee based on the gross revenue, as defined in the statute, for the use of the public right-of-way. If there is an incumbent cable operator in that jurisdiction, the fee shall be 5% of the holder's gross revenue or the

percentage applied to the incumbent's gross revenue, whichever is less. If there is no local franchises or after all local franchise have expired, the franchise fee will be 5% of gross revenue or a lower level set by the local government through ordinance.

In addition this bill provides that the local government shall control the time, place, and manner in which video service providers access the public right-of-way under the same terms and conditions as they control the telephone companies' access to the right-of-way today.

This bill also includes uncodified Legislative intent language that video service providers shall pay as rent a franchise fee to the local entity in which service is being provided for the continued use of streets, public facilities, and other rights-of-way of the local entity in order to provide service.

With respect to property tax issues, this bill provides uncodified Legislative intent language that "it is the intent of the Legislature that securing a state franchise by a cable television operator or video service provider pursuant to this act shall not affect the existing requirements governing the valuation of possessory interests as set forth in Section 107.7 of the Revenue and Taxation Code. Furthermore, nothing in this act shall be construed to change the existing jurisdiction of the State Board of Equalization and county assessors with respect to the assessment of these properties for property tax purposes."

COMMENTS

1. **Purpose.** The purpose of this bill is to promote competition for broadband and video service. Current law requires companies seeking a new video franchise to seek a separate franchise in each local government entity where it wants to provide video service. A company wishing to provide service across the state would need to seek over 400 franchise agreements. This bill would allow a company to seek a state-issued franchise from the PUC.

   Supporters believes this bill will lead to a rapid deployment of new video and broadband services across the state as new competitors, including the existing local telephone companies, make investments in existing and new networks needed to compete with the existing cable companies to provide video and internet services.

   Today only a few areas of the state have multiple video operators. Instead, competition for video service comes primarily from satellite services, such as DirecTV and the DISH network, which are not required to obtain a local franchise or pay a franchise fee to the locals. Today satellite service accounts for approximately 27% of the video market. A few companies are obtaining local franchise agreements to provide competing video services, but due to the current franchising process, this is occurring on a limited and slow basis across the state.

2. **Key Amendments. The August 23** amendments added legislative intent language that the bill would not change (1) the valuation of possessory interests as set forth in Section 107.7 of the Revenue and Taxation Code, and (2) the existing jurisdiction of the Board of Equalization and county assessors with respect to the assessment of these properties for property tax purposes. **The June 26** amendment added an amendment to Revenue and Taxation Code Section 107.7 to add cross references to the new state franchise fee.

3. **Franchise Fees.** This bill requires all holders of state-issued franchises to pay the local government a rent or toll in the form of a "franchise fee" for the use of the public right-of-way. The rent or toll cannot exceed the franchise fee that is paid by the incumbent cable provider today. After the current franchises expire, the "fee" will be set at 5% of gross revenue, or the local entity can set the "fee" at a lower level. Federal and state law already cap franchise fees at 5%.

4. **Current Practices for State Assessees and Local Assessees.** Currently, locals assess a possessory interest for cable TV providers and the Board assesses a possessory interest for video service providers that are also telephone companies in their unitary assessment.

5. **Cable TV providers that currently have franchise agreements at the local level may migrate to the new state franchise system once their current franchises expire.** This bill ensures that any locally assessed Cable TV provider that eventually switches to the state franchise system will continue to benefit from the provisions of Section 107.7 and will continue to be locally assessed.

Assembly Bill 3076 (Committee on Revenue and Taxation) Chapter 364

Property Tax Omnibus Bill

Effective January 1, 2007. Among other things amends Sections 61, 62, 69.5, and 170 of, and adds Section 38800 of, the Revenue and Taxation Code.

BILL SUMMARY

This bill contains provisions related to the property tax, which do the following under the Revenue and Taxation Code:

- Amend Sections 61 and 62 of the Property Tax Law to expressly provide that certain change in ownership provisions related to manufactured homes located on leased land will be similarly applied to floating homes located on leased land (berths).
- Amend Section 69.5 of the Property Tax Law to allow base year value transfers to be granted on a prospective basis if a claim is filed after the designated filing period.
- Amend Section 170 of the Property Tax Law to delete extraneous language related to the period of time to respond to an assessor's request to file an application for disaster relief.

This bill, with respect to property taxes, deletes obsolete date specific laws.

In addition, this bill contains a **Board-sponsored provision** which adds Section 38800 to allow the Board to accept offers in compromise for the Timber Yield Tax Law.

Sponsor: California Assessors' Association.
Board of Equalization joint sponsor of the amendment to Section 69.5. and the Timber Yield Tax change

Change in Ownership: Floating Homes
Revenue and Taxation Code Sections 61 and 62

LAW PRIOR TO AMENDMENT

Under existing property tax law, real property is reassessed to its current fair market value when there is a "change in ownership." (Article XIIIA, Sec. 2; Revenue and Taxation Code Sections 60 - 69.5)

The law provides special change in ownership provisions for property subject to long term leases. Generally, when property is subject to a lease, in tracking whether a change in ownership occurs, the "owner" of the property is considered to be either the lessee or the lessor depending upon the term of the lease. This is done to identify the "primary owner" of the property so that only a transfer of that person's interest in the real property will be a change in ownership.

Generally, in lease transactions, the lessee is treated as the "owner" of property subject to a lease with a remaining term (including renewal options) of 35 years or more. Thus, when the lease term is for 35 or more years, the lessee's interest is tracked for change in ownership purposes rather than the actual owner of the property. The interest in property for a 35 year term is considered to be equivalent in value to fee ownership. The rationale behind the 35-year "dividing line" is that long term leases (35 years or more) are "substantially equivalent in value to the fee interest" per Section 60, while in cases of leases that are less than 35 years, the value equivalent to the fee interest is retained by the lessor. Thus, when the lease term is for 35 or more years, the lessee's interest is tracked for change in ownership purposes rather than the actual owner of the property.

Generally, with respect to property that is leased, a "change in ownership" occurs:

- upon the creation of a leasehold interest in taxable property for a term of 35 years or more (including renewal options);
- upon the termination of a leasehold interest in taxable real property which had an original term of 35 years or more (including renewal options);
- upon the transfer of a leasehold interest having a remaining term of 35 years or more, including renewal options; or
- upon any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of less than 35 years.

There are some single family residential housing developments in California where homes are located on leased land (i.e., the house is owned but the land upon which the house was built is leased). To address this special type of situation, existing law conclusively presumes that all homes eligible for the homeowners' exemption, other than manufactured homes, that are on leased land are under a lease that has a renewal option of at least 35 years, whether or not in fact that renewal option exists in any contract or agreement. In practical application, these laws mean that whenever such a property is sold then both the land and the home (classified as an "improvement") will be reassessed to its current market value. And if the land is ever sold, then neither the land nor the home would be reassessed. In these situations, the property tax assessment for both the land and the home is billed as a single assessment to the homeowner.

Manufactured homes located on leased land are treated differently. They are specifically excluded from the long term lease conclusive presumption. Separate

assessments are prepared for the manufactured home owner and for the land owner. When a manufactured home changes ownership, only the manufactured home itself is reassessed – not the land underneath it. In addition, the sales price of the manufactured home may not necessarily be the assessed value of the property if site value is reflected in the sales price. The assessed value may often be less than the sales price when “site value” is present (the manufactured home sells for a higher price because of its location within the park). For manufactured homes, there are separate assessments, with the manufactured homeowner paying taxes on the manufactured home and the landowner paying taxes on the land.

Existing law is silent as to specific change in ownership provisions for floating homes. In practice, assessors treat floating homes similarly to manufactured homes. When a floating home sells, only the floating home itself is reassessed, not the underlying berth. And, the assessed value of the floating home may be less than the sales price paid for the home if it includes berth right values. The floating homeowner pays taxes only for the home and the berth owner pays taxes for the land.

AMENDMENT

This bill expressly provides in law that floating homes, which are located on leased land (berths), will be treated similarly as manufactured homes with respect to the long term lease conclusive presumption. This reflects current administrative practices.

COMMENTS

1. **Purpose.** To codify in law existing administrative practices.
2. **What is a Floating Home?** A "Floating Home" is a legally-permitted structure, with no means of self-propulsion, which occupies a permanent berth. (See Revenue and Taxation Code Section 229) It complies with all applicable codes and is connected to all utilities and services, including water, sewage, electricity, gas, telephone, and cable television. Floating home marinas are privately owned and charge homeowners monthly berth fees.

Prospective Base Year Transfers:
Late Filed Claims for Propositions 60/90/110
Revenue and Taxation Code Section 69.5

LAW PRIOR TO AMENDMENT

Relevant to this bill, voters have approved three constitutional amendments permitting a person to "transfer" his or her Proposition 13 base year value from one residence to another. A "base year value transfer" allows eligible homeowners to preserve the Proposition 13 protected value of their prior residence by transferring it to the new residence. This essentially allows a homeowner who qualifies to continue to pay the same basic amount of property taxes. Without this provision, the property taxes on the new residence would be based on its current fair market value, which is usually the sales price, because of the change in ownership.

- Proposition 60, approved by the voters on November 6, 1986, amended Section 2 of Article XIII A of the California Constitution to allow persons over the age of 55 to sell a principal place of residence and transfer its base year value to a replacement principal place of residence within the same county.
- Proposition 90, approved by the voters on November 8, 1988, extended these provisions to a replacement residence located in another county under limited conditions.
- Proposition 110, approved by the voters on June 5, 1990, extended these provisions to severely and permanently disabled persons of any age.

Section 69.5 provides the statutory implementation for Propositions 60, 90, and 110. It details the provisions by which persons over the age of 55 years and disabled persons may transfer, subject to many conditions and limitations, the base year value of their primary residence to a replacement residence that is purchased or newly constructed. This property tax relief is generally allowed only once in a lifetime.

Relevant to this bill, to receive the base year value transfer, Section 69.5 requires the taxpayer to file a claim form with the assessor within three years of the date the replacement residence is purchased or new construction is completed.

AMENDMENT

This bill amends Section 69.5 to allow the assessor to grant, on a prospective basis, a base year value transfer with respect to property to which a transfer of base year value was available, but for which a timely claim was not filed.

For transfers of base year value that were not timely claimed, the effective date of the base year value transfer would be the lien date of the assessment year in which the claim is filed. For example, any late filed claim in 2007 would be first effective for the January 1, 2007 lien date which in turn is associated with the 2007-08 fiscal year tax bill.

There will be no refund or cancellation of taxes that accrued prior to the prospective application of the base year value transfer.

For any claim that was not timely filed prior to January 1, 2007, the claimant may refile a claim with the assessor.

IN GENERAL

Property Tax System. California's system of property taxation under Article XIII A of the California Constitution (Proposition 13) values property at its 1975 fair market value, with annual increases limited to the inflation rate, as measured by the California Consumer Price Index, or 2%, whichever is less, until the property changes ownership or is newly constructed. At the time of the ownership change or new construction, the value of the property for property tax purposes is redetermined based on current market value. The value initially established, or redetermined where appropriate, is referred to as the "base year value." Thereafter, the base year value is subject to annual increases for inflation. This value is referred to as the "factored base year value."

COMMENTS

1. **Purpose.** This provision is sponsored by the California Assessors Association and the Board of Equalization to ensure that taxpayers are not permanently barred from receiving a constitutionally authorized benefit due to a statutory requirement.
2. **Key amendments.** The **August 7, 2006 amendments** added back a small provision that was inadvertently deleted in AB 3075 (AB 3075's provisions were incorporated into this measure on June 19, 2006 and contained the inadvertently deleted provision).
3. **Prospective Application.** If a claim is made after the customary three year filing period, then the base year value transfer will be granted on the date commencing with the lien date of the assessment year the claim form is filed (i.e., property tax refunds are not issued for past years, but future property tax bills will reflect the lower assessed value).
4. **Statutory Requirement.** Base year value transfers were authorized via constitutional amendment by the voters of California (i.e., Propositions 60, 90, and 110). The three year period to file a claim is a statutory requirement and no such requirement exists in the Constitution.
5. **The parent-child change in ownership exclusion has allowed prospective relief since 1998.** Allowing prospective relief is consistent with the direction the Legislature took with the parent-child exclusion in 1997 (SB 542, Ch. 941). This was also a Board sponsored provision stemming from a Taxpayers' Rights Advocate recommendation.
6. **Impact on Transfers Occurring Previous to this Measure.** This bill would apply to all transfers that occurred since the effective date of the respective base year value provisions (i.e., Proposition 60, 90, or 110). Thus, persons previously denied the base year value transfer due to a late filed claim (or who never filed) may refile a claim and receive the transfer on a prospective basis.

Disaster Relief Applications: Assessor Prompted Notification to File

Revenue and Taxation Code Section 170

LAW PRIOR TO AMENDMENT

Under existing law, property taxes may be reduced following a disaster, misfortune, or calamity in those counties where the board of supervisors has adopted an ordinance authorizing the disaster relief provisions of Section 170 of the Revenue and Taxation Code. These provisions apply to both disasters affecting many properties, such as a flood, and individual properties, such as a home fire.

Disaster relief is provided by allowing the county assessor, under specified conditions, to reassess the property as of the date of the disaster to recognize the loss in a property's market value. The prior assessed value of the damaged property is reduced in proportion to the loss in market value; the new reduced value is used to calculate a pro-rata reduction in taxes. The affected property retains its lower value, with reduced taxes, until it is restored, repaired, or reconstructed.

In some counties, the property owner must "apply" i.e., file a claim form before the assessor can reassess the property. In other counties, the assessor can initiate the reassessment process without any claim being filed. In these counties, the board of supervisors has adopted an ordinance granting the assessor this authority.

Section 170(a) provides broad authority for the assessor to initiate reassessments without the owner filing a claim. It provides the ordinance may specify that "the assessor may initiate the reassessment" without the property owner filing a claim if the assessor determines that within the preceding 12 months the property was damaged or destroyed. Similarly, Section 170 (l) allows the assessor to initiate the reassessment without the property owner filing a claim but on a more limited case by case basis.

In counties where a taxpayer must first file a claim, it must be filed within the time frame specified in the local county's ordinance or within 12 months of the disaster, whichever is later. However, relevant to this bill, prior to 2001, some property owners only had 60 days after the disaster to file a claim. But if the property owner did not independently file a claim within the required former 60 day period, a second opportunity to file a claim was provided. Specifically, if the assessor mailed a claim to the property owner, it restarted a new filing period and gave the owner an additional 60 days to file. However, the additional 60 day period could not extend beyond 12 months after the date of the disaster.

AMENDMENT

This bill amends subdivision (d)(1) of Section 170 to delete the reference to the 60 day period. Because a taxpayer now has 12 months to file a claim, the reference to the 60 period no longer fits within the context of the other provisions of Section 170 and should be deleted.

Regardless of the circumstance, (i.e., assessor mails claim to prompt the taxpayer to file or the taxpayer independently files a claim) any taxpayer would have 12 months after the date of the damage or disaster to file a claim if one is required.

COMMENT

Purpose. A housekeeping measure to correct a sentence that is no longer logical in context with the remainder of the section provisions.

Offers in Compromise - Timber Yield Tax
Revenue and Taxation Code Section 38800

LAW PRIOR TO AMENDMENT

Under existing law, when a tax or fee (tax) liability is not paid when due, the Board will bill the tax or fee-payer (taxpayer), negotiate for payments, search for the taxpayer's assets, and take collection actions to gain access to assets to satisfy the debt. Collection actions may include manually searching records for assets, making telephone calls, or seizing and selling such assets as vehicles, vessels, or stocks. In the event of a hardship, existing law allows installment payment arrangements, or collection may be deferred until the financial situation of the tax debtor improves. However, if taxpayers can obtain loans or can use credit lines to pay their tax debts, they are expected to do so.

If a debt remains unpaid for a number of years and a lien has been filed but assets cannot be located, the Board may write off the debt. When a debt is written off, it is still due and owing and any liens recorded are still valid, but routine billing and collection actions are discontinued unless assets are subsequently located. There is no statute of limitations on the Board's collection of a tax debt, and interest and applicable penalties continue to accrue. The debt also remains on the taxpayer's credit record, impeding his or her ability to obtain credit.

AMENDMENT

This bill adds Section 38800 to allow the Board to accept offers in compromise under the Timber Yield Tax program.

BACKGROUND

In 2002, the Board sponsored legislation to add Sections 7093.6 (Sales and Use Tax Law), 9278 (Use Fuel Tax Law), and 50156.18 (Underground Storage Tank Maintenance Fee Law) to provide a statutory process to compromise tax liabilities. Since enactment, the approval rate has improved to 42%, from a historical low of less than 10% in 1999. For the fiscal year 2004-05 the Offer in Compromise program collected approximately 60% of the tax due (which excludes penalty and interest).

COMMENT

Purpose. Since the Board only has the statutory authority to compromise a tax debt for Sales and Use Tax, Use Fuel Tax, and Underground Storage Tank Maintenance Fees, the Board must use an administrative process to compromise tax liabilities for tax programs that do not have such statutory authority. However, this requires that the Board initiate a civil action against the tax debtor. Such an action may be prepared and filed by staff but, in some cases requires the assistance of the Attorney General. This bill allows Board to compromise final tax liabilities when it is in the best interest of the state and when the taxpayer does not have the means to pay more than the amount offered now or in the foreseeable future.

Senate Bill 1317 (Torlakson) Chapter 872

Public Utilities – Electric Generation Facilities

Effective January 1, 2007. Amends Section 100 of, and adds Section 100.95 to, the Revenue and Taxation Code.

BILL SUMMARY

This bill changes the allocation of property tax revenues derived from state assessed qualified electric generation facilities, substation facilities, and transmission lines newly constructed by a public utility after January 1, 2007.

Sponsor: Southern California Edison

LAW PRIOR TO AMENDMENT

Under current law incremental growth in property tax revenues from state assessed property, except railroads, occurring post-1987 is shared on a “countywide" basis. Additional revenues could be the result of increased property values, new construction or 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. Under the countywide system, all entities receive a share in the revenues regardless of whether any of the value growth actually occurred within its jurisdictional boundaries.

Existing law provides a few exceptions to this revenue allocation procedure for some state assessed properties:

- For three specific state assessed properties newly constructed after 1987, the revenue from those properties is allocated only to certain governmental agencies, as specified, in the tax rate area where the property is located (i.e., situs based) rather than allocating its incremental growth on a countywide basis. (See *Revenue & Taxation Code §100(i), (j) and (k)*.)
- Tax revenue from certain state assessed electrical generation facilities that are not owned by a rate-regulated public utility (i.e., “merchant power plants”) are allocated only to those governmental agencies and school entities in the tax rate area where the facility is located (i.e., situs based). (See *Revenue and Taxation Code §100.9)*

Under existing law, the revenues from the property which is the subject of this bill would be allocated using the countywide system. The special provisions for electrical generation facilities in Section 100.9 would not apply since the property is owned by a rate-regulated public utility rather than a merchant power plant provider. A merchant power plant generates electricity for sale in the open wholesale power market, whereas a power plant owned by a public utility generally generates electricity for its own customers use.

AMENDMENT

This bill adds Section 100.95 to the Revenue and Taxation Code to change the allocation of property tax revenues from new public-utility owned state assessed "qualified property" that is newly constructed after January 1, 2007. The new allocation is detailed below.

"Qualified property" means all plant and associated equipment, including substation facilities and fee-owned land and easements, placed in service by the public utility on or after January 1, 2007, and related to the following:

- Electric generation facilities that have a nameplate generating capacity of 40 megawatts or more.
- Electrical substation facilities that meet either of the following conditions:
  (1) The high-side voltage of the facility's transformer is 50,000 volts or more, or
  (2) The substation facilities are operated at 50,000 volts or more.
- Electric transmission line facilities of 200,000 volts or more.

"Qualified property" does not include additions, modifications, reconductoring, or equivalent replacements to the plant and associated equipment made after the plant and associated equipment are placed in service. It also does not extend to property subject to Section 100(k).

The revenues would be allocated to the county government, school entities, and special districts under the countywide system as noted below.

Governmental Entity	Tax Rate	Allocation	Change in Allocation
County	Countywide	Countywide	No Change
School Entities	Countywide	Countywide	No Change
Special Districts (Other than enterprise special districts as defined)	Countywide	Countywide	No Change

After this allocation is made, the balance of the revenues would be allocated to three jurisdictions in the specific tax rate area where the property is located (city, fire, and water) as noted below.

Governmental Entity	Tax Rate	Allocation	Percentage of Balance	Change in Allocation
City (or county if project situs is in an unincorporated area)	Countywide	Situs based	90%	Increase
Water Service Provider	Countywide	Situs based	10%	Increase
Any other governmental entities (most likely cities) and enterprise special districts in the county – including those that would have received a share under the countywide method and those that are specifically in the tax rate area where the project is located		None	0%	Decrease – No revenue allocation

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., countywide 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 countywide system was established. Hence, the property tax revenues derived from these proposed projects 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 50 MW or more Location: Statewide	Situs Based	Section 100.9	AB 81 (2002)
Pacific Bell (Computer Center) Location: City of Fairfield	Situs Based – as specified	Section 100(i)	AB 454 (1987)
PG&E (Education and Training Center) Location: City of Livermore	Situs Based – as specified	Section 100(j)	SB 53 (1991)
SDG&E (Power Plant -Never Constructed) Location: City of Chula Vista	Situs Based – as specified	Section 100(k)	AB 1108 (1993)
SDG&E (Power Plant - Under Construction) Location: City of Escondido	Situs Based – as specified	Section 100(k)	AB 2558 (2004)

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. AB 2890 by Assembly Member Hannigan in 1986 created the countywide system. According to the author's press release on this bill, the Assembly Revenue and Taxation Committee had held an interim hearing in the Fall of 1985 on property tax issues that resulted 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 countywide 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 countywide system. That analysis noted:

> 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

After electrical deregulation, AB 81 (Ch. 57, Stats. 2002) was enacted to change the revenue allocation of power plants divested by public utilities, as well as those newly constructed by merchant power plant owners, to provide for situs based revenue allocation.

COMMENTS

1. **Purpose.** To provide a financial incentive for cities to support the construction of these electrical generation facilities and substations within their boundaries by ensuring a greater share of the resulting property tax revenues.
2. **Key Amendments.** The **August 21** amendments added legislative intent language that the Board is not required to modify its computer roll system in order to implement the provision of this bill. Instead, the Board will issue a

special report to county auditors. In addition, it specifically requires public utilities to provide information in a form as prescribed by the Board. These amendments were made at the Board's request to reduce the Board's implementation costs. The **April 25** amendments excluded special districts (except for "enterprise special districts") from any change in revenue allocation and deleted a dedicated allocation to the fire district where the property is located. The **April 14** changes amended Section 100 to add cross references to new Section 100.95 and specified that the county auditor make appropriate pro rata reductions to other entities necessary to make the special revenue allocations.

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

   - **Merchant Plants: Situs Based.** Pursuant to Section 100.9, 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.
   - **Rate-Regulated Public Utility Owned Power Plants: Countywide System.** 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 (except for the power plant to be constructed in the City of Escondido, an exception created last year by AB 2558).

4. **These plants or other facilities will be owned by rate-regulated electric public utilities rather than merchant power providers; therefore, the tax revenues will be allocated under the countywide system**. Without this bill, the additional property tax revenues derived from these new plants would be sprinkled across the county. Under current law, if a new power plant, substation, or transmission line is built in the city limits, all cities in that county will receive some share of the revenues from the plant. The city where the power plant is located does not receive any more revenue than if the plant was located in some other city in the county – even though the city is providing services to the property. Further, all special districts operating in the county will receive some minor share – even those that provide no services to the property.

5. **Example.** For property located in Sacramento County, 18 percent of property tax revenues are allocated to the county, 20 percent are allocated to special districts, and 52 percent are allocated to school entities. This amounts to 90 percent of the total revenue. This bill would not change this 90 percent distribution, but would modify the distribution of the remaining 10 percent. The 10 percent would be allocated as follows: 90 percent to the City of Sacramento, and 10 percent to the water provider. No other city in Sacramento County (Folsom, Elk Grove, etc.) would receive any share nor would any other enterprise special district, as defined, in Sacramento County (including those that may operate in the tax rate area where the property is sited).

6. **This bill creates a unique blending of the situs and countywide systems.** This would require special handling by the Board and county auditors. With respect to the functions of the Board, this bill would require 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 qualified property be identified and segregated. The Board must then identify the properties to the county auditor. The Board's roll database is only capable of identifying property for purposes of revenue allocation to one of two tax rate areas: (the countywide tax rate area or the specific local tax rate area where the property is located). Therefore, this bill would require the Board to handle these properties specially and provide special information to county auditors so that they could make necessary revenue allocation adjustments.

7. **This bill includes easements as qualified property.** This bill calls for easements to be included as qualified property. The Board does not currently require electric easements to be mapped to indicate tax rate areas because of the burden on the assessees and staff. This would result in additional processing for both the state assessees and the Board.

Senate Bill 1400 (Kehoe) Chapter 251

Possessory Interest – Military Housing

Effective January 1, 2007. Amends Section 107.4 of the Revenue and Taxation Code.

BILL SUMMARY

This bill provides a definition of “military housing under military control” for purposes of the possessory interest property tax exemption for military housing.

Sponsor: San Diego County

LAW PRIOR TO AMENDMENT

Section 107.4 of the Revenue and Taxation Code provides that a private contractor’s interest in rental military family housing is not subject to property taxation as a possessory interest, provided certain requirements and conditions are met. One requirement is that the housing be located on a military facility under military control.

AMENDMENT

This bill adds subdivision (o) to Section 107.4 to define “military facility under military control” as a military base that restricts public access to the military base.

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 property.

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. The use must be independent, durable and exclusive.

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[3] 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

[3]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.

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."

In 2004, Senate Bill 451 (Ch. 853, Stats. 2004) added 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 specific criteria are met. An interest that is not independent fails to meet one of the three necessary elements for the interest to be subject to property tax. Thus, a private contractor's interest in military housing meeting the eligibility criteria would be exempt from property tax.

BACKGROUND

Congress established the Military Housing Privatization Initiative (MHPI) in 1996 as a tool to help the military improve the quality of life for its service members by upgrading the condition of their housing. The MHPI was designed and developed to attract private sector financing, expertise and innovation to provide necessary housing faster and more efficiently than traditional Military Construction processes would allow. The military enters into agreements with private developers selected in a competitive process to own, maintain and operate family housing via a fifty-year lease. The Department of Defense maintains an extensive website on the MHPI program at http://www.acq.osd.mil/housing.

COMMENTS

1. **Purpose.** To provide clarity as to the types of military housing eligible for the possessory interest exemption.

2. **Key Amendments.** The **June 20** amendments changed the definition of a "military facility under military control" to be a military base that restricts "*public access*" to the military base. The **June 13** amendments changed the definition of a "military base under military control" as a military base that restricts access "*onto the military base by"* the general public.

3. **San Diego has a number of privatized military housing projects, some of which are eligible for exemption under Section 107.4 and others which are not.** This bill seeks to expressly provide in statute that the housing be located on a military base in which public access to the military base is restricted.

Senate Bill 1607 (Machado) Chapter 224

Property Tax Omnibus Bill

Effective January 1, 2007. In part, Amends Sections 214, 214.8, 254.6, and 1840 of the Revenue and Taxation Code, and amends Section 2 of Chapter 48 of the Statutes of 1987.

BILL SUMMARY

This Board of Equalization sponsored property tax omnibus bill:

- Modifies the documentation needed when a nonprofit organization receiving the welfare exemption allows other qualifying nonprofit groups to use its property to hold weekly meetings without jeopardizing the property tax exempt status of the property. The meeting holder user would only need to provide a valid tax exemption letter. *§214*
- Includes governmental entities as qualifying members of a limited liability company, consistent with Property Tax Rule 136, and insert and move the phrase "limited liability companies" in various locations in Revenue and Taxation Code Section 214 to correct omissions and misplacement of the phrase. *§214 and §214.8*
- Expressly provides that the Board review claims for organizational clearance certificates for the veterans' organization exemption and issue the certificates to organizations that meet the requirements. *§254.5 and §254.6*
- Changes the deadline for filing an appeal with the Board on publicly owned taxable property ("Section 11 appeal") from the "Third Monday in July" to "July 20." *§1840*

This bill also includes a non-Board sponsored provision to:

- Modify Legislative intent language related to the step transaction doctrine and the parent-child change in ownership exclusion to expressly provide that it also extends to transfers eligible for the grandparent-grandchild exclusion. *Section 2 of Chapter 48 of the Statutes of 1987 (Relating to §63.1)*

Welfare Exemption - Occasional Users - Limited Liability Companies
Revenue and Taxation Code Sections 214 and 214.8

LAW PRIOR TO AMENDMENT

Charitable Use - Meetings Held by Other Nonprofits. In 2003 legislation was enacted to improve the joint administration of the welfare exemption by the Board and local county assessors. To eliminate the prior duplication of effort, duties were separated between the functions of organization eligibility, which is determined by the Board, and qualifying uses of property, which is determined by the assessor. In addition, it simplified the welfare exemption filing process by reducing the amount of paperwork nonprofits file annually, especially for those owning property in multiple counties. Nonprofit organizations that own property now apply to the Board for an "organizational clearance certificate" which is granted if the nonprofit meets the organizational requirements for the welfare exemption. This certificate is filed with the assessor of the county where the property is located and indicates the organization is eligible for the exemption provided it uses the property for qualifying purposes. Previously, a variety of documents such as articles of incorporation, financial statements, and tax exemption letters were required to be filed in duplicate in every county where the nonprofit owned property.

Relevant to this bill, the law generally allows a nonprofit organization that owns property receiving the welfare exemption to allow *other* nonprofit organizations (those exempt under either 501(c)(3) or 501(c)(4) of the Internal Revenue Code) to use its facilities to hold meetings no more than once per week without jeopardizing the tax exempt status of the property. The streamlining legislation inadvertently changed the documentation related to the use of a property for weekly meeting purposes by other nonprofit organizations to the organizational clearance certificate. Previously, only a copy of a valid tax exemption letter from the meeting holder was necessary.

Limited Liability Companies. Beginning January 1, 2005, the law allows property owned by a limited liability company (LLC) in which the members are qualifying organizations to qualify for the welfare exemption. Property Tax Rule 136, also effective January 1, 2005, provides that a governmental entity can be a qualifying member of a LLC.

AMENDMENT

Charitable Use - Meetings Held by Other Nonprofits. This bill amends Section 214 (a)(3)(D) to reinstate the documentation needed when a nonprofit organization receiving the welfare exemption allows other qualifying nonprofit groups to use its property to hold weekly meetings without jeopardizing its tax exempt status. This bill instead requires that a copy of a valid tax exemption letter be provided rather than a copy of an organizational clearance certificate.

In addition, this bill reverses an unintentional substantive amendment to Section 214 by an annual maintenance of the code bill. SB 662 (Stats. 2001, Ch. 159, Judiciary Committee), the maintenance of the code bill for 2001, substituted the word "of" for "or" in the last sentence of subparagraph (D) of paragraph (3) of subdivision (a) of Section 214.

Limited Liability Companies - Government Entities. This bill amends Section 214.8 to include governmental entities as qualifying members of a LLC, consistent with Property Tax Rule 136. This bill also inserts and moves the phrase "limited liability companies" in various locations in Section 214 to correct omissions and misplacement of the phrase.

BACKGROUND

Charitable Use - Meetings Held by Other Nonprofits. AB 3022 (Stats. 1990, Ch. 161, Klehs) added subparagraph (D) to paragraph (3) of subdivision (a) to Section 214 to allow weekly meetings held by 501(c)(3) and (c)(4) tax exempt organizations to be an acceptable use of property receiving the welfare exemption.

Streamlining Welfare Exemption Administration. SB 1062 (Stats. 2003, Ch. 471, SR&T Committee) amended statutory provisions relating to the welfare exemption to streamline the administration of the exemption by eliminating duplicative review functions performed by the assessors and the Board. These changes were effective on January 1, 2004.

Limited Liability Companies. AB 3073 (Stats. 2004, Ch. 354, SR&T Committee) amended statutory provisions relating to the welfare exemption to allow an exemption to qualifying LLCs and their properties. Section 214 (k) specified that the Board adopt a regulation to specify the ownership, organizational, and operational requirements for LLCs. The Board adopted Property Tax Rule 136 effective January 1, 2005. It specifies that a governmental entity is a qualifying member of a LLC for purposes of qualifying for the welfare exemption. It reads, in pertinent part:

> (b)(2) QUALIFYING ORGANIZATION. A qualifying organization is also a government entity that is exempt from property taxation under section 3 of Article XIII of the California Constitution, as to property owned by the state under subdivision (a), or as to property owned by a local government under subdivision (b), or as to property used exclusively for public schools, community colleges, state colleges and state universities under subdivision (d). A limited liability company is a qualifying organization if one or more of its members is a government entity, as specified, and all other members are exempt under section 501(c)(3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code and qualify for exemption under section 214 of the Revenue and Taxation Code.

COMMENTS

1. **Purpose.** The Board is sponsoring this provision as a housekeeping measure to correct technical deficiencies in existing law.
2. **Allowing other nonprofits to use a facility to hold weekly meetings is an acceptable charitable use of a property receiving the welfare exemption.** Requiring the meeting holder to provide an “organizational clearance certificate” was an unintended drafting error in the streamlining legislation of 2003. If followed, it would create additional paperwork filing requirements on a nonprofit that does not own property but instead only uses a property owned by another nonprofit that does hold an organizational clearance certificate. Additionally, 501(c)(4) tax exempt organizations are not able to obtain an organizational clearance certificate since only 501(c)(3) tax exempt organizations are eligible for

the welfare exemption. This bill is consistent with prior statutory requirements and current administrative practice.

3. **Technical amendment to reverse an annual maintenance of the code amendment that substituted the word "of" for "or."** This bill reverses an unintentional substantive amendment to Section 214 by SB 662 (Stats. 2001, Ch. 159, Judiciary Committee), the annual maintenance of the code bill for 2001. Related to providing a copy of a valid tax exemption letter for weekly meeting holders to the assessor, the law previously provided that: "The owner *or* the other organization shall also file with the assessor..." and now it reads "The owner *of* the other organization shall file with the assessor…". Usually, there is little or no direct contact between the assessor and a meeting holder (i.e., "the other organization") because they are not required to file an annual welfare exemption claim. In reviewing the claim filed by the nonprofit owner of the property, the assessor verifies that the property is used exclusively for charitable purposes and it is in this connection that a tax exempt letter from the meeting holder may be required. The tax exempt letter could be obtained from *either* the meeting holder or the property owner – who likely requires a copy of the letter for its files as a condition of allowing the use of its property for meetings so it can protect its tax exempt status.

4. **A government entity can be a member of an LLC for purposes of qualifying for the welfare exemption.** In developing Property Tax Rule 136 it was found that some local governments have entered into joint ventures with nonprofit organizations to own and operate property. Each member of the LLC, the local government and the nonprofit, is eligible for a property tax exemption if they own the subject property separately, either as government owned property or welfare exemption property, respectively. Property Tax Rule 136 was drafted to expressly recognize these joint ventures and this bill makes conforming amendments to Section 214.8.

Veterans' Organization Exemption - Organizational Clearance Certificates
Revenue and Taxation Code Sections 254.5 and 254.6

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 215.1 provides for the exemption of all buildings, and the real property required for the convenient use and occupation of the exempt buildings, owned by a veterans' organization which has been chartered by the Congress of the United States and is organized and operated for charitable purposes. The exemption applies when the premises are used and operated exclusively for charitable purposes by the organization and are not being conducted for profit and no part of the net earnings of the operation inures to the benefit of any private individual or member of the organization. This exemption is popularly known as the veterans' organization exemption and it is jointly administered by the Board and the local county assessor.

Effective with claims filed on or after January 1, 2004, the Board determines whether the organization is eligible to receive the veterans' organization exemption and the county assessor determines whether the use of the property is eligible for the exemption. If the Board determines that an organization is eligible, the Board issues an Organizational Clearance Certificate for the claimant to provide with exemption claim forms filed in any of the 58 counties.

Claims for the veterans' organization exemption must be filed annually with the county assessor in the county in which the organization's property is located. Claims are made on form BOE 269-AH (Claim for Veterans' Organization Exemption). The assessor may not grant a claim unless the organization holds a valid Organizational Clearance Certificate issued by the Board.

AMENDMENT

Senate Bill 1062 (Stats. 2003, Ch. 471) amended various statutory provisions relating to both the welfare exemption and the veterans' organization exemption to streamline the administration of these exemptions by eliminating duplicative review functions performed by the assessors and the Board. However, while the modifications were made for both exemptions, two sections of code were not updated to reflect the changes made to the administration of the veterans' organization exemption which this bill would correct.

This bill would amend Sections 254.5 and 254.6 to expressly provide that the Board staff review claims for organizational clearance certificates for the veterans' organization exemption and issue the certificates to organizations that meet the requirements of Section 215.1.

COMMENT

Purpose. The Board is sponsoring this provision to correct omission of language in the original exemption streamlining legislation, SB 1062, related to organizations seeking the veterans' organization exemption.

Section 11 Appeal Deadline
Revenue and Taxation Code Section 1840

LAW PRIOR TO AMENDMENT

Property owned by a local government is generally exempt from property taxation. However, some government owned property is subject to property tax and is assessed by the county assessor of the county where the property is located. Specifically, Article XIII, Section 11 of the California Constitution generally provides that real property owned by a local government that is located outside its boundaries is taxable if taxable when acquired, and specifically prescribes a method for the valuation of taxable government owned lands.

Section 1840 provides that if the governmental entity that owns the taxable property disagrees with the assessed value of the property determined by the local county assessor, it may file an appeal with the Board of Equalization to review the assessment. In all other instances, property tax appeals of locally assessed property are filed with the local assessment appeals board. These appeals of locally assessed property to the Board are commonly referred to as "Section 11 appeals."

Section 1840 provides that the third Monday in July is the final deadline to file a Section 11 appeal. Related to state assessee property tax appeals, Section 731 provides that the final deadline is July 20.

AMENDMENT

This bill, in part, amends Section 1840 to change the deadline to file a Section 11 appeal with the Board from the third Monday in July to July 20. This conforms the final filing date with that for a state assessee to file a property tax appeal with the Board.

COMMENTS

1. **Purpose.** The Board is sponsoring this legislation to conform the petition filing deadline in Section 1840 for filing property reassessment petitions on publicly-owned property, i.e., Section 11 appeals, with the deadline in Section 731 for filing a petition for a state assessed unitary property reassessment.
2. **Related Legislation.** In 2000, the Board sponsored legislation amending various sections of code to simplify the petition filing process and deadlines for appeals of assessments and allocations of state assessed properties. (SB 2170, Stats. 2000, Ch. 647). As a result, the appeals deadline for state assessees is July 20. The filing deadline for Section 11 appeals with the Board was not modified to conform to the new deadline.

Grandparent–Grandchild Transfers - Step Transaction Doctrine
Section 2 of Chapter 48 of the Statutes of 1987

LAW PRIOR TO AMENDMENT

Section 63.1 provides a change in ownership exclusion for transfers between parents and children, and in limited instances, between grandparents and grandchildren. Because the exclusion only applies to transfers of "real property" as opposed to transfers of legal entity interests, the Legislature provided uncodified legislative intent language in Section 2 of the Statutes of Chapter 48 addressing the step transaction doctrine.

AMENDMENT

This bill amends the uncodified legislative intent language to expressly provide that its provisions extend to the grandparent-grandchild exclusion.

COMMENT

Purpose. This provision is sponsored by the author to expressly state that the uncodified language also extends to the property transfers between grandparents and their grandchildren.

Senate Bill 1637 (Veterans Affairs Committee) Chapter 677

Disabled Veterans' Exemption

Effective January 1, 2007. Amends Sections 75.21, 276.1, 276.2, 277, and 408 of the Revenue and Taxation Code

BILL SUMMARY

This bill addresses a number of housekeeping provisions related to the disabled veterans' exemption. In addition, it requires that a person claiming the disabled veterans' exemption provide their social security number or other personal identifying number, and makes the claim confidential.

Sponsor: California Assessors' 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 or disease 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 that the disabled veterans' exemption is available to property that constitutes the principal place of residence of a veteran who has a disability rating at 100 percent or has a disability compensation rating at 100 percent because he or she is unable to secure or follow a substantially gainful occupation.

Qualification	Basic Exemption	Low Income Exemption
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 as adjusted for inflation	$150,000 as adjusted for inflation

The amount of the exemption depends upon the claimant's income. For the 2006-07 fiscal year, the basic exemption adjusted for inflation is $103,107. If the claimant's income is less than $46,302, the exemption amount is $154,661.

The specific elements of this California Assessors' Association sponsored bill to address disabled veterans' exemption issues are as follows.

Supplemental Assessments – Late Filed Claims
Revenue and Taxation Code Section 75.21

LAW PRIOR TO AMENDMENT

Existing law allows the disabled veterans' exemption to be applied to any supplemental assessment. (A supplemental assessment generally results in a tax bill that reflects a reassessment of a property to its current market value because of a change in ownership.) To claim the exemption on a supplemental assessment, Section 75.21(c) requires that the claim be filed within 30 days of the date on the notice of supplemental assessment. However, if a claim is made after this date, the exemption is still available but at a reduced level.

With respect to the disabled veterans' exemption, if a claim is filed after the specified 30 day period, Section 75.21(c)(3) allows 80 percent of the exemption to be applied.

AMENDMENT

This bill amends Section 75.21 to increase the amount of the exemption provided from 80 percent to 90 percent (or 85 percent), as specified.

COMMENT

Purpose. This provision is intended to increase the exemption provided to a disabled veteran on a supplemental assessment in the event that a claim is filed after the 30 day period.

Delayed Disability Ratings

Revenue and Taxation Code Section 276.1

LAW PRIOR TO AMENDMENT

Section 276 provides that when a person eligible for the disabled veterans' exemption files a claim after the deadline, the exemption can still be received, but at a reduced level.

Section 276.1 provides an exception to this general rule. If a person filed a late claim due to a pending disability rating from the United States Department of Veterans Affairs (USDVA), the full level of the exemption will be granted, provided the claim is filed within a specified period of receiving the disability rating.

AMENDMENT

This bill amends Section 276.1 to expressly provide that the effective date of the exemption is the effective date of the disability.

COMMENTS

1. **Purpose.** This provision would clarify the effective date of the exemption in cases of delayed disability ratings. In some cases, counties have based the effective date of the exemption on the next lien date after the claim is filed.
2. **Key Amendments.** The **May 2** amendments addressed a comment made in the prior analysis of this bill. As introduced, the language read that the exemption would be effective the date the USDVA makes a disability rating decision. However, the date of the determination could be a much later date. In addition, because of the proposed re-lettering of the subdivisions, new subdivision (b) did not directly reference the limitation on refunds of taxes previously paid, which could have caused confusion.

Portability of Disabled Veterans' Exemption
Revenue and Taxation Code Section 276.2

LAW PRIOR TO AMENDMENT

Sections 276.2 and 272.3 allow a person to immediately terminate and transfer the disabled veterans' exemption from one home to another.

Prior to these provisions being enacted in 2000, it was possible that a disabled veteran would not receive the full benefit of the exemption the first year after purchasing a new home. And in some cases, the buyer of the disabled veteran's prior home received the benefit of the exemption.

The various 58 county assessor offices use different administrative procedures for providing the disabled veterans' exemption on a property for the first time, depending upon the factual circumstances.

AMENDMENT

This bill adds subdivision (b) to Section 276.2 to expressly provide that its provisions apply regardless of the mechanism used to grant the full amount of the exemption to a newly qualifying home: i.e., the annual property tax bill, a supplemental assessment, or an escape assessment. In addition, it expressly provides for the exemption to be appropriately prorated.

COMMENTS

1. **Purpose.** This provision is a housekeeping proposal to expressly list the different administrative procedures that might be used to give disabled veterans their exemption (i.e., applied to the regular annual tax bill, applied to a tax bill resulting from supplemental assessment, or applied to a tax bill resulting from an escape assessment.) In addition, with respect to midyear changes, it expressly states that the exemption be prorated to apply to the period of time the property is the primary residence.
2. **Key Amendments.** The **June 19** amendments allowed the surviving spouse of a person killed on active duty in the military to begin receiving the exemption as the date of death. Since September of 2000, the law was changed to allow almost everyone to begin receiving the disabled veterans' exemption immediately. Unfortunately, the law changes did not address the situation where a member of the forces is killed and the surviving spouse thus becomes eligible. In this case, the exemption doesn't start until the fiscal year after the death - rather than as of the date of death. The purpose of the June 19 amendment is to correct this inequity. The May 2 amendments makes corrective changes. As introduced there appeared to be a blending of the two possible types of situations where Section 276.2 applies: (1) when the claimant buys a new home or (2) the claimant already owned the home and subsequently moves in.

Social Security Numbers – Duplicate Claims

Revenue and Taxation Code Section 277 and 408

LAW PRIOR TO AMENDMENT

Section 277 lists the information that is required to be provided on the disabled veterans' claim form.

Currently, a claim for the disabled veterans' exemption is treated as a public record and is open to public inspection. A statement to this effect is included at the bottom of the claim form to inform claimants.

AMENDMENT

This bill amends Section 277 to require that a person claiming the exemption provide their social security number or another personal identifying number.

In addition, this bill amends Section 408 to provide that disabled veterans' claim forms are not public documents and not open to public inspection to insure the confidently of these claims.

As required by Section 3 of Article I of the California Constitution, this bill makes Legislative findings to demonstrate the interest protected by providing that these claim forms are not public documents and the need for protecting that interest.

COMMENTS

1. **Purpose.** To be able to address possible duplicate claims for the disabled veterans' exemption since there is no method of determining if claimants are the same person filing in multiple counties.
2. **This bill does not require the Board to act as the statewide clearinghouse for disabled veterans' exemption claims.** The Board currently maintains a database, as required by Section 218.5, to monitor claims for the homeowners' exemption to prevent multiple claims from being made.

TABLE OF SECTIONS AFFECTED

SECTIONS		BILL NUMBER	CHAPTER NUMBER	SUBJECT
Revenue & Taxation Code				
§61	Amend	AB 3076	Ch. 364	Floating Homes - CIO
§62	Amend	AB 3076	Ch. 364	Floating Homes - CIO
§63.1	Amend	SB 1607	Ch. 224	Grandparent-Grandchild Exclusion
§69	Amend	AB 1890	Ch. 317	Disaster - Base Year Value Transfer
§69.5	Amend	AB 3076	Ch. 364	Prospective Base Year Value Transfers
§75.21	Amend	SB 1637	Ch. 677	Disabled Veterans' Exemption
§100	Amend	AB 2670	Ch. 791	Railroad Property
§100	Amend	SB 1317	Ch. 872	Electric Generation Facilities
§100.1	Amend Repeal	AB 2670	Ch. 791	Railroad Property
§100.11	Add	AB 2670	Ch. 791	Railroad Property
§100.95	Add	SB 1317	Ch. 872	Electric Generation Facilities
§107.4	Amend	SB 1400	Ch. 251	Military Housing – Possessory Interests
§107.7	Amend	AB 2987	Ch. 700	Cable TV - Possessory Interests
§170	Amend	AB 3076	Ch. 364	Disaster Relief
§214	Amend	SB 1607	Ch. 224	Welfare Exemption
§214.8	Amend	SB 1607	Ch. 224	Welfare Exemption - LLCs
§218	Amend	AB 1798	Ch. 896	Disasters – Homeowners' Exemption
§218	Amend	AB 2735	Ch. 897	Disasters – Homeowners' Exemption
§254.5	Amend	SB 1607	Ch. 224	Veterans' Organization Exemption

Revenue and Taxation Code				
§254.6 Amend	SB 1607	Ch. 224	Veterans' Organization Exemption	
§276.1 Amend	SB 1637	Ch. 677	Disabled Veterans' Exemption	
§276.2 Amend	SB 1637	Ch. 677	Disabled Veterans' Exemption	
§277 Amend	SB 1637	Ch. 677	Disabled Veterans' Exemption	
§401.20 Add	AB 2182	Ch. 417	Valuation Factors – High Tech	
§408 Amend	SB 1637	Ch. 677	Disabled Veterans' – Claims Confidential	
§755 Amend	AB 2670	Ch. 791	Railroad Property	
§756 Amend	AB 2670	Ch. 791	Railroad Property	
§1840 Amend	SB 1607	Ch. 224	Section 11 Appeals - Filing Deadline	
§ 38800 Add	AB 3076	Ch. 364	Offers in Compromise - Timber Yield Tax	