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
2008

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Assembly Bill 550 (Ma) Chapter 297

Mandatory Audits

Effective January 1, 2009. Amends Section 469 of the Revenue and Taxation Code.

BILL SUMMARY

This bill restructures the mandatory audit program and eliminates the requirement that the assessor audit every taxpayer with trade fixture and business tangible personal property holdings of $400,000 or more at least once every four years.

Sponsor: California Assessors' Association

LAW PRIOR TO AMENDMENT

Under existing property tax law, an ad valorem tax is imposed every year on all assessable personal property used in a trade or business at its current fair market value. In making this annual assessment, taxpayers typically report the cost of their property holdings to the local county assessor on the "business property statement" as provided for Revenue and Taxation Code Section 441. The business property statement shows all taxable property, both real and personal, owned, claimed, possessed, controlled, or managed by the person filing the property statement.

Revenue and Taxation Code Section 469 requires county assessors to audit, at least once every four years, the books and records of any taxpayer engaged in a profession, trade, or business, if the taxpayer has assessable trade fixtures and business tangible personal property valued at $400,000 or more. These statutorily required audits are commonly referred to as "mandatory audits."

Additionally, the assessor may audit the books and records of taxpayers with holdings below $400,000 in value under the authority of Revenue and Taxation Code Section 470. These audits are referred to as "nonmandatory audits." Generally, assessors perform both mandatory and nonmandatory audits to ensure that their audit program includes a representative sample of all sizes and types of property taxpayers with personal property holdings subject to the property tax.

AMENDMENT

This bill deletes the requirement that the assessor audit all taxpayers with trade fixture and business tangible personal property holdings of $400,000 or more at least once every four years. Instead, the assessor is required to annually audit a specified fixed number of taxpayers in the county. Only taxpayers that have the largest assessments in the county, as defined, would continue to be subject to an audit once every four years. The number of required audits varies by county. The minimum number of required audits is equal to 75% of the average number of mandatory audit accounts required under the prior law for the 2002–03 fiscal year to the 2005–06 fiscal year.

IN GENERAL

Audit Objective. A property tax *audit* is a means of collecting data relevant to the determination of taxability, situs, and value of property. It is used to verify an assessee's reported cost on the required annual property statement and other information which may influence the assessment of taxable property. An *audit program* is a system used to select and conduct these audits. Both are used to sample property tax assessments to ensure that taxable property and related information have been accurately reported by the assessee and have been properly assessed by the assessor.

The primary objective of the property tax audit is to determine that a correct assessment has been made. The auditor applies generally accepted auditing standards and utilizes generally accepted accounting and appraisal principles in performing these audits. Audits, and the audit program as a whole, help to identify problems, correct inaccurate existing assessments, and increase the likelihood that future assessments will be accurate through improved reporting by the assessee and improved understanding of the property by the assessor's office.

Audit Selection. An important part of the audit program is the selection of accounts to be audited. As previously discussed, some audits are required by law *(mandatory*) while additional audits (commonly referred to as *nonmandatory*) can be selected by the assessor as a means of sampling the system as a whole.

Mandatory Audits. As required by Section 469 and Property Tax Rules 192 and 193, for assessees owning, controlling, or possessing tangible business personal property and fixtures with a full cash value of $400,000 or more, audits must be completed at least once in each four-year period. However, an in-depth audit is not always required for each year in the four-year period. The auditor may "sample" one year in the four-year audit period. If no material discrepancy or irregularity is found, there is no requirement to audit the remaining years. If a discrepancy is found, the auditor must continue and audit the remaining years unless (1) the discrepancy or irregularity in the "sample" year is peculiar to that year and (2) the discrepancy or irregularity did not result in an escape.

Nonmandatory Audits. These are audits not required by law, but are authorized by Section 470 and Property Tax Rule 192(e). The Board recommends that these types of audits should be done in addition to mandatory audits since an audit program would not be complete unless it includes a representative sample from all sizes and types of property. Nonmandatory audits are selected at the discretion of the assessor.

Depending on the resources available, it may be difficult for county assessors to complete a large number of nonmandatory audits. Counties may develop criteria for selecting these audits rather than making a random selection. Examples of criteria appropriate for selection may include: identified discrepancies; accounts just below the mandatory audit cut-off; inconsistent, incomplete, or nonfiled property statements; taxpayer's request for audit; and/or selection by type of business.

BACKGROUND

The statutory requirement that assessors audit all taxpayers above a certain threshold was established in 1966. Initially the threshold level was set at $50,000. The level was increased to $100,000 in 1976, to $200,000 in 1979, to $300,000 in 1991 and to its present level of $400,000 in 2001.

COMMENTS

1. **Purpose.** According to the author "There are two basic goals of this legislation: (1) providing assessors more flexibility to maximize their limited audit resources by reducing the total number of mandatory audits (2) to improve reporting compliance by expanding the parameters of taxpayers subject to a mandatory audit. AB 550 eliminates the arbitrary $400,000 mandatory audit threshold by County Assessors giving the Assessors flexibility to more efficiently utilize scarce resources."

2. **Audits help to identify problems, correct inaccurate existing assessments, and increase the likelihood that future assessments will be accurate through improved reporting by the assessee and improved understanding of the property by the assessor's office.** An audit program is not complete unless it includes a representative sample from all sizes and types of property. Some assessors report, however, that fulfilling the statutorily required audits, which are generally performed on the same group of taxpayers once every four years, leaves little, if any, resources to perform audits of smaller accounts that have never been audited. Modifying the audit selection process would give assessors in those counties that have a large number of businesses with holdings meeting the current mandatory audit threshold level, greater flexibility in directing some of their existing resources in auditing smaller accounts that have never been audited.

3. **How many audits would be annually required under this bill?** In the case of a county that had 800 taxpayers with trade fixture and business tangible personal property holdings of $400,000 or more, over a four year period the assessor would have been required to conduct 200 audits per year to ensure that each taxpayer was audited once as required by law. This bill would set the minimum number of audits required to be conducted at 75 percent of that amount or 150 audits. Of the 150 annually required audits, one half, or 75, would be required to be conducted of the largest taxpayers in the county and the other half would be selected by the assessor from among any taxpayer in the county.

4. **Some of the taxpayers with the largest assessments in the county would continue to be subject to audit on a four year cycle.** To determine the number of taxpayers that would continue to be audited on a cyclical basis, all of the taxpayers in the county would be ranked in descending order by assessed value of trade fixtures and business tangible property. The number of annual audits required for a particular county under this bill, multiplied by four, serves as the cut-off point for the set of taxpayers subject to a audit once every four years. In the example above, if a county previously had 800 taxpayers subject to a mandatory audit, the county would instead have a pool of 300 (75 x 4) taxpayers they are required to audit on a four year cycle. If any taxpayer ceases to be in the top 300 assessments, then the taxpayer would no longer be required to be audited.

5. **Flexibility in selecting taxpayers for audit may yield more productive findings.** Most taxpayers who are subject to mandatory audits are routinely audited. Thus, these taxpayers generally have a higher level of compliance with property tax law since prior audits have increased their knowledge of such. Consequently, an auditor may yield more productive findings from auditing taxpayers that were previously not a part of the routine audit cycle.

Assembly Bill 1451 (Leno) Chapter 538

New Construction Exclusion
Active Solar Energy Systems
Building for Resale

Effective September 28, 2008. Amends Section 73 of the Revenue and Taxation Code.

BILL SUMMARY

This bill, with respect to the new construction exclusion for active solar energy systems:

- Extends the sunset date from the 2008-09 fiscal year to the 2015-16 fiscal year; and
- Allows the value of the exclusion to apply to the initial purchaser of a new building, as specified.

Sponsor: Solar Alliance

LAW PRIOR TO AMENDMENT

New Construction Exclusion – Active Solar Energy Systems. In general, when real property is "newly constructed," it is appraised and assessed for property tax purposes. (Cal. Const. Art. XIII A, Sec. 2(a)) The California Constitution, Article XIII A, Section 2(c)(1), grants the Legislature the authority to exclude the construction or addition of any active solar energy system from the definition of "newly constructed." Section 73 of the Revenue and Taxation Code is the implementing statute for this new construction exclusion. The current property tax exclusion for new active solar energy systems is scheduled to sunset after the 2008-09 fiscal year. However, after the exclusion sunsets, any solar energy system constructed remains exempt from property tax for so long as the property does not change ownership.

Change in Ownership Terminates New Construction Exclusion. After a change in ownership, the entire property, including the portion of the property (or additional value) previously exempted from taxation under the new construction exclusion, is subject to reassessment to its current market value. Consequently, in the case of properties constructed for immediate resale, there is little, if any, tax benefit under the new construction exclusion.

AMENDMENT

Sunset Date. This bill extends the new construction exclusion to the 2015-16 fiscal year and provides for an automatic repeal of its provisions on January 1, 2017.

Solar Energy Systems Incorporated into New Buildings – Exclusion Extended to Initial Purchaser. In the case where a solar energy system is incorporated by an owner-builder in the initial construction of a new building that the owner-builder does not intend to occupy or use (i.e., offered for sale, such as new homes in a subdivision), the exclusion applies to the building's first buyer if the owner-builder did not request and receive the exclusion for the same active solar energy system and only if the initial buyer purchased the new building prior to that building becoming subject to reassessment to the owner-builder, as described in subdivision (d) of Section 75.12. This provision of law essentially provides that when the builder's exclusion from supplemental assessment for completion of new construction is being claimed, thereby delaying an immediate reassessment of the property as of the actual date of completion for purposes of the supplemental roll, then any construction deemed to be completed on the following lien date would be fully assessed for purposes of the regular assessment roll.

If the exclusion is eligible to be extended to the initial purchaser, then in determining the base year value to be established as a result of the change in ownership, the base year value would be reduced by the portion of the purchase price that is attributable to the active solar energy system. Thereafter, any subsequent change in ownership of the property would end the exclusion of the value of the active solar energy system from property tax. If the solar energy system received any rebates, appropriate adjustments are to be made.

The Board is required to prescribe the claim form, in consultation with the California Assessors' Association, to request that the new construction exclusion after the change in ownership be honored.

Effective Date. The amendments made by this bill are prospective and its provisions apply beginning with any qualifying improvements completed on or after January 1, 2008.

IN GENERAL

Property Tax System. Article XIII, Section 1 of the California Constitution provides that all property is taxable, at the same percentage of "fair market value," unless specifically exempted, or authorized for exemption, within the Constitution. Article XIII A, Section 2 of the California Constitution defines "fair market value" as the assessor's opinion of value for the 1975-76 tax bill, or, thereafter, the appraised value of property when purchased, newly constructed, or a change in ownership has occurred. This value is generally referred to as the "base year value." Barring actual physical new construction or a change in ownership, annual adjustments to the base year value are limited to 2% or the rate of inflation, whichever is less. Article XIII A, Section 2 provides for certain exclusions from the meaning of "change in ownership" and "newly constructed" as approved by voters via constitutional amendments.

New Construction. The constitution does not define the terms "new construction" or "newly constructed." Revenue and Taxation Section 70 defines these terms, in part, to mean:

> Any addition to real property, whether land or improvements (including fixtures), since the last lien date.
> Any alteration of land or any improvements (including fixtures) since the last lien date that constitutes a "major rehabilitation" or that converts the property to a different use.

A major rehabilitation is any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture.

With respect to any new construction, the law requires the assessor to determine the added value upon completion. The value is established as the base year value for those specific improvements qualifying as "new construction" and is added to the property's existing base year value. When new construction replaces certain types of existing improvements, the value attributable to those preexisting improvements is deducted from the property's existing base year value. (R&T Code §71)

New Construction Exclusions. Certain types of construction activity are excluded from assessment as "new construction" via constitutional amendment. Consequently, while these improvements may increase the value of the property, the additional value is not assessable.

Prop	Election	Subject	Code
8	Nov-78	Disaster Reconstruction	§70(c)
7	**Nov-80**	**Active Solar Energy Systems**	**§73**
23	Jun-84	Seismic Safety (Unreinforced Masonry)	§70(d)
31	Nov-84	Fire Safety Systems	§74
110	Jun-90	Disabled Access Improvements (Homes)	§74.3
127	Nov-90	Seismic Safety Retrofitting & Hazard Mitigation	§74.5
177	Jun-94	Disabled Access Improvements (All Properties)	§74.6
1	Nov-98	Environmental Contamination Reconstruction	§74.7

Overview of Solar Energy New Construction Exclusion

An "active solar energy system" is defined in Section 73 as a system that uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy. Such a system does not include solar swimming pool heaters, hot tub heaters, passive energy systems, or wind energy systems.

An active solar energy system may be used for any of the following:

- Domestic, recreational, therapeutic, or service water heating.
- Space conditioning.
- Production of electricity.
- Process heat.
- Solar mechanical energy.

An active solar energy system includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. "Parts" includes spare parts that are owned by the owner of, or maintenance contractor for, an active solar energy system for which the parts were specifically purchased, designed, or fabricated for installation in that system. Such a system includes only equipment used up to, but not including, the stage of transmission or use of the electricity.

An active solar energy system also includes pipes and ducts that are used *exclusively* to carry energy derived from solar energy. Pipes and ducts that are used to carry *both* energy derived from solar energy and energy derived from other sources may be considered active solar energy system property only to the extent of 75 percent of their full cash value.

An active solar energy system does not include auxiliary equipment, such as furnaces and hot water heaters, that use a source of power *other* than solar energy to provide usable energy. Dual use equipment, such as ducts and hot water tanks, that is used by both auxiliary equipment and solar energy equipment is considered active solar energy system property only to the extent of 75 percent of its full cash value.

Legislative History of Solar Energy New Construction Exclusion

Proposition 7 (SCA 28, Alquist) was approved by voters in 1980 and amended the California Constitution by giving the Legislature the authority to exclude from property tax assessment the addition of active solar energy systems as assessable new construction.

SB 1306 (Stats. 1980, Ch. 1245; Alquist) added Section 73 to the Revenue and Taxation Code to implement Proposition 7. Its provisions were operative for five fiscal years: 1981-82 through 1985-86.

AB 1412 (Stats. 1985, Ch. 878; Wyman), extended the exclusion for another five fiscal years: 1986-87 through 1990-91. It also required the Legislative Analysts Office to report to the Legislature by January 1, 1990 on the fiscal and economic effects of the exclusion.

SB 1311 (Greene) in 1989 proposed repealing the exclusion on January 1, 1990. SB 1311 was not heard in any committee.

AB 4090 (Wyman, Alquist) in 1990 proposed extending the exclusion through the 1993-94 fiscal year. AB 4090 passed both houses, but was vetoed by Governor Deukmejian. The Governor's veto messages stated that he supported efforts to encourage the development of solar energy in California, but the bill would have resulted in millions of dollars of property tax revenue loss to local entities in the high desert region of the state, and solar energy income tax credits were otherwise available. At that time, a major commercial project to build solar-electrical generating facilities (SEGS) in the Mojave Desert near Barstow in San Bernardino County was underway by Luz International Ltd.

SB 103 (Stats. 1991, Ch. 28; Morgan) extended the exclusion for three more fiscal years - 1991-92 through 1993-94. SB 103 added a new Section 73 to the code, since the prior Section 73 was repealed by its own provisions on January 1, 1991. However, SB 103 was urgency legislation effective on May 14, 1991 and drafted in a way that the continuity of the exclusion would not be affected. SB 103 included a provision to automatically repeal its provisions on January 1, 1995 absent future legislative action. No legislation was enacted prior to the repeal date so the exclusion was not available for five fiscal years (1994-95 through 1998-99) until AB 1755 was enacted as noted below.

SB 1553 (Alquist) in 1994 would have, in part, extended the exclusion indefinitely, however these provisions were amended out of this bill prior to its enactment.

AB 1755 (Stats. 1998, Ch. 855; Keeley) re-established the exclusion for six fiscal years: 1999-2000 through 2004-05. (SB 116 (Peace) in 1998 would have, in part, also re-established the exclusion. This bill was not enacted.)

AB 1099 (Stats. 2005, Ch. 193; Leno) extended the exclusion to the 2008-09 fiscal year.

COMMENTS

1. **Purpose.** The purpose of this bill is to ensure that there is an actual tax benefit for newly built homes constructed with a solar energy system, ensure investors that the exclusion will still be in effect for long planned commercial scale solar energy projects, and extend the exemption to the transmission elements of these projects.

2. **Amendments.** The **August 13, 2008** amendments deleted definitions for "electrical corporation" and "local publicly owned electric utility" which were related to provisions deleted from the bill by prior amendments. The **January 7, 2008** amendments deleted provisions expanding the exclusion to equipment related to the transmission and distribution of the electricity produced by the solar energy system but only if the electricity is transmitted to a utility for inclusion in the utility's transmission or distribution network. **The August 28, 2007** amendments provided that the exclusion provided to the initial purchaser will only be allowed if the initial buyer purchases the new building prior to that building becoming subject to reassessment to the owner-builder because of completion of new construction on the regular assessment roll. This amendment was made to reconcile possible constitutional issues identified by the Legislative Counsel related to extending the new construction exclusion to a property after a change in ownership of that property had occurred. The **June 6, 2007** amendments (1) prohibited the post-change in ownership exclusion if the owner-builder claimed the exclusion for the same system to prevent "double dipping" and (2) make its provisions severable, as some have questioned the constitutionality of this provision. In addition, in regard to the provision to extend the exclusion to transmission and distribution related equipment, if the electricity is being transmitted to a utility, the exclusion is limited to equipment, poles, towers, and structures other than buildings. The **May 16**, **2007** amendments added the provisions of this bill as they relate to rebates, provided that the Board would consult with the California Assessors' Association in prescribing the manner, documentation, and form for claiming the exclusion, and expressly provided that the amendments made by this bill shall apply prospectively. The **May 8, 2007** amendments expanded the provisions of this bill from single family residences to all buildings and modified the provisions related to transmission and distribution equipment.

3. **Except for a five-year hiatus for fiscal years 1994-95 through 1998-99 the exclusion has been available since 1981.** This bill would ensure the continuity of the exclusion through 2016.

4. **New construction exclusions remain in effect until the property changes ownership.** Generally, new construction exclusions remain in effect until the property changes ownership, at which point the entire property, including the portion of the property (or additional value) previously exempted from taxation under the new construction exclusion, will be reassessed at its current market value pursuant to the change in ownership provisions of Proposition 13.

5. **In the case where a building is built for immediate sale, this bill provides that the exclusion would continue to apply to the initial purchaser of the building.** Without these provisions, the new construction exclusion is ineffectual for any new building that is not intended to be occupied or used by the owner-builder. Once a building is sold (i.e., changes ownership), the entire property must be reassessed to its current market value for purposes of Proposition 13.

6. **However, if the builder is fully assessed for the property on the lien date (January 1) following the date of completion of the new construction and the initial purchaser buys the property after the lien date, then the initial purchaser would not be eligible for the new construction exclusion.** For example, if a home with an active solar energy system is completed on November 15, 2007, and thus the new construction of the home is 100% complete on the lien date for purposes of determining the assessed value of the property for the 2008-09 regular roll, and the home does not sell until March 15, 2008, then the initial purchaser would not be eligible for the new construction exclusion for the solar energy system. However, if the purchase takes place on December 31, 2007, then the initial purchaser would be eligible for the new construction exclusion on the solar energy system. This provision was added to address issues raised by opponents of this measure who argued that such an extension to an initial purchaser would require a specific constitutional amendment. Proponents state that allowing the exclusion to be extended only when it was not claimed by the original owner-builder falls within the spirit of the existing constitutional authorization to exclude from the property tax the value added by active solar energy systems. This bill and AB 1239 (Garrick) of this legislative session set a precedent of extending the benefits of the new construction exclusion after a change in ownership for the first purchaser only. AB 1239 relates to fire sprinkler, fire safety, and fire detection systems.

7. **This bill would require an assessor to subtract out the incremental value of qualified improvements when a new building that incorporates an active solar energy system is initially constructed.** This bill would set a precedent for excluding the value of particular components of an entirely new property. Specifically, the new base year value of the building established as a result of the change in ownership would be reduced to reflect that portion of the value attributable to the active solar energy system (less the total amount of any rebates received for the system).

8. **The new construction exclusion was created in 1980 via Proposition 7 to provide that the construction or addition of an active solar energy system to an existing property, by itself, would not lead to a revaluation of the property for property tax purposes.** At that time, a solar energy system included in the initial construction of a property was not common. Rather, a property owner would add a system to an existing property. Today, some residential subdivisions incorporate active solar energy systems in the initial construction of the home either as a standard feature or as an optional upgrade.

9. **State assessed properties are not eligible for the new construction exclusion because it is only applicable to locally assessed property.** For instance, active solar energy systems owned by public utilities and subject to assessment by the Board are not exempt from property taxation; their value would continue to be captured under the unitary approach to value. This is because Proposition 13's (California Constitution Article XIII A) assessment rollback provisions, its 2 percent limit on annual assessment growth, and its limits on current market value assessment following only a change in ownership or completion of new construction, do not apply to state assessed property, but only to locally assessed property.

Assembly Bill 3035 (Huffman) Chapter 201

Welfare Exemption – Supplemental Assessment

Effective January 1, 2009. Adds Section 75.24 to the Revenue and Taxation Code.

BILL SUMMARY

This bill extends the grace period to qualify for the property tax welfare exemption from 90 days to 180 days on a supplemental assessment.

Sponsor: Sonoma County

LAW PRIOR TO AMENDMENT

Property Tax Exemptions. Existing law exempts from property taxation specified types of property or property owned by specified taxpayers. Related to this bill, there are two types of property tax exemptions available to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code.

- **Church Exemption**. Buildings, land on which they are situated, and equipment used exclusively for religious worship.
- **Welfare Exemption.** Property used exclusively for religious, hospital, scientific, or charitable purposes and owned or held in trust by corporations or other entities that are organized and operating for those purposes, that are nonprofit, and no part of whose net earnings inures to the benefit of any private shareholder or individual.

Supplemental Assessments. Existing property tax law requires property to be reassessed to its current market value whenever there is a change in ownership. "Supplemental assessments" provide a mechanism to immediately reflect the change in assessed value (an increase or decrease) as of the date it occurs for property tax purposes.

Revenue and Taxation Code Section 75.22 provides that a property tax exemption, such as the welfare exemption, will apply to a supplemental assessment triggered by a change in ownership if the person claiming the exemption meets the qualifications for that exemption on that property no later than 90 days after the date of the change in ownership. These provisions also apply to a supplemental assessment triggered by the *completion* of new construction. However, in case of new construction, like constructing a new building, the entire property becomes eligible for the welfare exemption the moment construction *commences* if the intended use of the facilities under construction would qualify the property for the exemption. Because the welfare exemption is generally in effect by the time the new construction is completed, the 90 day grace period to qualify for the welfare exemption in the case of a new construction is generally irrelevant.

AMENDMENT

This bill adds Section 75.24 to provide that notwithstanding Section 75.22, in the case of an organization, that qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, and that purchases or acquires a property resulting in a "change in ownership" of the property (which results in reassessment of the property to current market value), the property will be eligible for exemption from the supplemental assessment if the organization claiming the exemption is a qualified organization and meets the qualifications for the exemption established by this part no later than 180 days after the date of the change in ownership or the completion of new construction.

IN GENERAL

Supplemental Assessments. Existing property tax law requires property to be reassessed whenever there is a change in ownership or the completion of new construction. A "supplemental assessment" provides a mechanism for picking up a change in assessed value as of the date it occurs. The increase (or decrease) in assessed value is reflected in a prorated assessment (the supplemental assessment) that covers the portion of the fiscal year (July 1-June 30) remaining after the date of change in ownership or completion of new construction. For a change in ownership or completed new construction occurring between January 1 and May 31, two supplemental assessments are issued. The first covers the portion of the current fiscal year remaining after the date of the event; the second covers the ensuing fiscal year in its entirety. An increase in assessed value results in a supplemental tax bill and a decrease in assessed value results in the issuance of a refund check. These supplemental assessments are entered into the "supplemental roll" and contain properties that have changed ownership or had new construction completed, as opposed to the regular "assessment roll" prepared each fiscal year which contains all property in the county.

RELATED LEGISLATION

Sale of Tax Exempt Property – Terminates Exemption. In 2005, SB 555 (Ch. 264 Machado) added Section 75.23 to the Revenue and Taxation Code to immediately terminate a property tax exemption on a property when it is sold if the new property owner is not otherwise eligible for an exemption via the supplemental assessment process. In practical application this means that a person who purchases a property that was previously exempt from property tax, will receive a supplemental assessment that reflects full taxation of the property as of the date of purchase. The increase in assessed value resulting from the change in ownership upon which the supplemental assessment is calculated is the difference of zero (to reflect the prior tax exemption) and the new assessed value of the property. Previously, the new property owner enjoyed a windfall since the property continued to hold the prior owner's tax exempt status for as long as eighteen months, depending upon the date of acquisition.

Construction Activity Starts the Exemption. In recent years, a number of bills have been introduced to modify when a property owned by a nonprofit organization can begin to receive the exemption in the case of vacant land or undeveloped property.

- AB 3074 (AR&T) in 2004 proposed granting the welfare exemption to properties on a retroactive basis for the period between the submission of an application for a building permit and the commencement of actual physical construction.
- AB 783 (Maddox and Mountjoy) in 2003 proposed granting the welfare exemption to properties on the date an application for a building permit was filed. As introduced, it would have started the exemption once various activities such as "seeking" permits, environmental studies, government entitlements and approvals, financing, and contractors.
- AB 2662 (Bogh) in 2002 would have provided that property already in the course of construction will not be considered "abandoned," and therefore no longer eligible for

exemption, if construction is delayed due to financing delays or delays in governmental approval.

COMMENTS

1. **Purpose.** This provision is intended to provide nonprofits more time to qualify for the welfare exemption on newly acquired properties.
2. **The income tax exemption does not automatically confer a property tax exemption to a Section 501(c)(3) nonprofit organization.** Property is not eligible to receive the property tax welfare exemption unless it is owned and *operated* by a nonprofit entity for exempt purposes and activities. Under existing law, if a nonprofit organization purchases a property and begins to use the property for an exempt activity within 90 days, it is eligible for exemption from supplemental assessment.
3. **What is a supplemental assessment?** If a property is purchased for $500,000 and its prior assessed value was $200,000, a supplemental assessment in the amount of $300,000 would be processed to reflect the increase in assessed value. If the property purchased is eligible for the welfare exemption, the welfare exemption will be applied to the supplemental assessment and no taxes would ultimately be owed related to the increase in assessed value due to the change in ownership.
4. **It can take longer than 90 days to obtain a special license necessary to operate certain types of properties.** The proposed changes were triggered by a situation in Sonoma County in which a nonprofit organization purchased a residential care facility previously run as a for-profit enterprise. The nonprofit intended to take over the operation of the care facility. However, to do so it needed a license from a governmental agency for the specific location which took longer than 90 days to acquire. To keep the facility in continuous operation it was necessary to lease the facility back to the former owner. Because the property was unable to qualify for the welfare exemption within 90 days of acquiring the property, a supplemental assessment was issued.
5. **In the case of vacant land or undeveloped property owned by a nonprofit organization, a number of bills have been introduced in recent years to modify the point in time when the property can begin to receive the exemption.** This bill would, in some measure, address the issue giving rise to these bills. With this bill, an organization would now have up to 180 days from the date of purchase to begin demolition or construction on property designated for a future exempt use and qualify for a full exemption. Vacant or unused property held for future construction does not qualify for the welfare exemption since it is not being “used” for an exempt purpose and activity. For example, a nonprofit organization may have enough funds to acquire land, but not enough to commence its construction project. Consequently, these properties are subject to property tax.

Senate Bill 1064 (Hollingsworth) Chapter 386

Disaster Relief
Homeowners' Exemption
Revenue Loss Reimbursement

Effective September 27, 2008. Among its provisions, amends Sections 195.120, 195.122, and 218 of, and adds Sections 195.128, 195.129, 195.130, 195.131, 195.132, 195.133, 195.134, 195.135, 195.136, 195.137, 195.138, 195.139, 195.140, 195.141, 195.142, 194.143, 194.144, and 194.145 to, the Revenue and Taxation Code.

BILL SUMMARY

This bill, in part:

- Allows persons whose homes were destroyed in specified disasters to retain the homeowners' exemption on their property while they are in the process of rebuilding. *§218*
- Provides one-year state reimbursement to backfill property tax revenue loss resulting from assessment reductions related to these disasters. *§§195.128-195.139*
- Changes the fiscal year for which reimbursement will be made for state reimbursement to El Dorado County to backfill property tax revenue loss for the June 2007 fire near Lake Tahoe. *§§195.120 and 195.122*.

Sponsor: Senator Hollingsworth

LAW PRIOR TO AMENDMENT

Homeowners' Exemption. 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, 2008 is not eligible for the homeowners' exemption on the 2008-09 property tax bill.[1]

Disaster Relief - Property Reassessment for Property Owners. Section 170 of the Revenue and Taxation Code provides that property taxes may be reduced following a

[1] A home destroyed on or after January 1, 2008, would continue to be eligible for the exemption on the 2008-09 property tax bill. However, if the home has not been rebuilt and occupied by the next lien date, January 1, 2009, it would not be eligible for the homeowners' exemption on the 2009-10 property tax bill.

disaster, misfortune, or calamity in those counties where the board of supervisors has adopted an ordinance authorizing these provisions. These provisions apply to both governor-declared disasters and site-specific disasters 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 loss in value must be at least $10,000. 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. Generally, taxpayers have up to 12 months to file a request for reassessment.

Disaster Relief - State Reimbursement for Local Governments. Additionally, legislation is frequently enacted to fully reimburse local governments for one year's property tax revenue loss associated with Section 170 reductions in assessment.

State Reimbursement – El Dorado County Wildfire. Sections 195.120, 195.121, and 195.22 of the Revenue and Taxation Code provide reimbursement to El Dorado County for wildfires that commenced on June 24, 2007 for the property tax revenue losses associated with the 2006-07 fiscal year, which is a period of six days.

AMENDMENT

Homeowners' Exemption. This bill allows persons whose homes were destroyed in specified disasters in certain counties to retain the homeowners' exemption on their property while they are in the process of rebuilding. Those are:

Wildfires - 2007. This bill adds subdivision (o) to Section 218 to provide that a dwelling qualified for the homeowners' exemption prior to the commencement of the wildfires listed in the governor's disaster proclamations of September 15, 2007, and October 21, 2007, and that was subsequently damaged or destroyed by these wildfires and any other related casualty in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura will continue to be eligible for the homeowners' exemption.

Winds - Riverside. This bill adds subdivision (p) to Section 218 to provide that a dwelling qualified for the homeowners' exemption prior to October 20, 2007 and subsequently damaged or destroyed by extremely strong winds and any other related casualty in Riverside County will continue to be eligible for the homeowners' exemption.

Wildfires - 2008. This bill adds subdivision (q) to Section 218 to provide that a dwelling qualified for the homeowners' exemption prior to the commencement dates of wildfires for which the Governor issued a proclamation of a state emergency in the months of May, June, or July and subsequently damaged or destroyed by the fires and any other related casualty in Butte, Kern, Mariposa, Mendocino, Monterey, Plumas, Santa Clara, Santa Cruz, Shasta, and Trinity counties will continue to be eligible for the homeowners' exemption.

Wildfires – Santa Barbara. This bill adds subdivision (r) to Section 218 to provide that a dwelling qualified for the homeowners' exemption prior to July 1, 2008 and subsequently damaged or destroyed by wildfires and any other related casualty in Santa Barbara County will continue to be eligible for the homeowners' exemption.

State Reimbursement – Wildfires and Winds. This bill also provides state reimbursement for property tax revenue losses due to Section 170 disaster relief reassessments. Specifically, it adds provisions to the Revenue and Taxation Code to outline the process and timeline for the affected counties, the Department of Finance, and the State Controller to follow for each particular disaster.

State Reimbursement – El Dorado County Wildfire. This bill modifies state reimbursement provisions enacted last year for property tax revenue losses due to Section 170 disaster relief reassessments for the fire. Specifically, it changes the fiscal year for which reimbursement will be made from 2006-07 to 2007-08 and makes corresponding changes to the timeline for El Dorado County, the Department of Finance, and the State Controller to complete the reimbursement process.

IN GENERAL

Disaster Relief. There are a variety of provisions in property tax law to provide property tax relief for disaster victims. These provisions address both the short-term and the long-term consequences of the disaster as it relates to current and future property tax liabilities. In the short term, property tax liability is redetermined to reflect the damage to the property and for some the next property tax installment payment may be deferred. Over the long term, property owners may rebuild or repair the damage to their property without incurring any increase in property tax liability. Alternatively, property owners may instead relocate rather than rebuild without being adversely impacted by the property tax consequences. The various provisions of law in the Revenue and Taxation Code are noted below.

DISASTER RELIEF REFERENCE CHART

Section	Property Type	Type of Relief Available	Type of Disaster
170	All property types	Reassessment	Any disaster or calamity
194 & 194.1	Real property and manufactured homes	Property tax deferral – next installment	Governor-proclaimed
195.1	Real property and manufactured homes	Property tax deferral – second consecutive installment	Governor-proclaimed
194.9	Real property and manufactured homes	Property tax deferral – supplemental assessment	Governor-proclaimed
69	All property types	Base year value transfer	Governor-proclaimed
69.3	Principal place of residence	Base year value transfer	Governor-proclaimed
69.5	Principal place of residence —over 55 or physically disabled	Base year value transfer	Any disaster or calamity
172 & 172.1	Manufactured homes	Base year value transfer	Governor-proclaimed
70	Real property only	New construction exclusion	Any disaster or calamity
5825	Manufactured homes	New construction exclusion; Base year value transfer	Any disaster or calamity

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
Zaca Fire – Santa Barbara and Ventura County	2007	Stats. 2007, Ch. 224 (AB 62)
Angora Fire – El Dorado County	**2007**	**Stats. 2007, Ch. 224 (AB 62)**
Freeze	2007	Stats. 2007, Ch. 224 (AB 62)
Day and Shekell Fires - Ventura County	2006	Stats. 2007, Ch. 224 (AB 62)
Northern California Storms, Floods & Mudslides	2006	Stats. 2006, Ch. 396 (AB 1798)
Northern California Storms, Floods & Mudslides	2006	Stats. 2006, Ch. 897 (AB 2735)
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.** This bill provides some financial relief to persons whose homes were damaged or destroyed as a result of various disasters and to provide property tax revenue backfill to affected local governments. The bill also makes corrective amendments related to legislation enacted last year to provide property tax revenue backfill to El Dorado County for the Lake Tahoe fire.
2. **Amendments.** The **August 14, 2008** amendments added disaster relief provisions for Humboldt County for wildfires that started in May. The Au**gust 8, 2008** amendments added disaster relief provisions for Inyo County for rainstorms that started in July. The **July 14, 2008** amendments added disaster relief provisions for

additional counties affected by wildfires occurring in May, June, and July of 2008. The **July 1, 2008** amendments specified the dates of the governor's proclamations for the two wildfires of September 15, 2007 for San Bernardino County and October 21, 2007 for the seven Southern California Counties. The **May 22, 2008** and **March 10, 2008** amendments changed the fiscal year for which reimbursement to El Dorado County will be made from the 2006-07 fiscal year to the 2007-08 fiscal year. Because the fire took place at the end of the 2006-07 fiscal year, reimbursement would be limited to a six day period without these clean up amendments to last year's AB 62 (Stats. 2007, Ch. 224). The **February 25, 2008** amendments added co-authors and corrected a typographical error. As introduced, the language adding subdivision (p) to Section 218 relating to wind damage provided that a dwelling must be qualified for the homeowners' exemption prior to October 20, 2006; however, the year 2007 was intended and the amendment makes this correction.

3. **Proclamations.** Related to this bill, the following proclamations of a state of emergency have been issued by the Governor.

   Wildfires. On September 15, 2007, a proclamation was issued for the county of **San Bernardino** for fires that started on September 14, 2007.

   Wildfires. On October 21, 2007, a proclamation was issued for the counties of **Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura** for more than 11 major wildfires burning in Southern California at that time. Eventually there were a total of 23 fires that burned between October 20 and November 9, 2007.

   Winds. On November 2, 2007, a proclamation was issued for extremely high winds and resulting damage for the county of **Riverside** that began about October 20, 2007.

   Wildfires. On May 24, a proclamation was issued for the county of **Santa Clara** for a fire that began burning on May 22, 2008.

   Wildfires. On June 11, 2008, a proclamation was issued for the county of **Butte** for a fire that began on June 10, 2008.

   Wildfires. On June 12, 2008, a proclamation was issued for the county of **Santa Cruz** for the Martin Fire that started on June 11, 2008.

   Wildfires. On June 23, 2008, a proclamation was issued for the counties of **Monterey** and **Trinity** Counties for various fires that began to burn on June 8 in the Los Padres National Forest areas and June 21, 2008 in the Big Sur area.

   Wildfires. On June 26, 2008, a proclamation was issued for the counties of **Mendocino** and **Shasta** for the many wildfires that stated on June 20, 2008 in Mendocino and June 21, 2008 in Shasta.

   Wildfires. On June 30, 2008, a proclamation was issued for the counties of **Plumas** and **Kern** for the wildfires that began on June 22, 2008 in Plumas and June 28 in Kern.

   Wildfires. On July 1, 2008, a proclamation was issued for the county of **Mariposa** for the major fires that started on June 21, 2008.

   Wildfires. On July 3, 2008, a proclamation was issued for the county of **Santa Barbara** for the fires that began burning on July 1, 2008.

Storms, Flooding, Mudslides. Only July 15, 2008, a proclamation was issued for the county of **Inyo** that for severe thunderstorms that began on July 12, 2008.

Wildfires. On August 6, 2008, a proclamation was issued for the county of Humboldt for wildfires that erupted on May 22, 2008.

4. **Other Fires Occurring in 2007.** Legislation enacted last year, AB 62 (Stats. 2007, Ch. 224) has already addressed the Zaca Fire that occurred in the 2007 calendar year for Santa Barbara and Ventura Counties.

5. **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.

6. **The Board advises county assessors that damaged homes may keep the exemption but totally destroyed homes may not.** 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."

Senate Bill 1233 (Harman) Chapter 349

Parent-Child Change in Ownership Exclusion – Processing Fee

Effective January 1, 2009. Amends Section 63.1 of the Revenue and Taxation Code.

BILL SUMMARY

Related to the parent-child change in ownership exclusion, this bill allows a county board of supervisors to authorize a processing fee of up to $175 to recover administrative costs to reverse a reassessment of a property ultimately eligible for the exclusion if the owner was previously notified twice, as specified, of the availability of the exclusion and the need to file a claim.

Sponsor: California Assessors' Association

LAW PRIOR TO AMENDMENT

Under existing property tax law, property is reassessed to its current fair market value whenever there is a "change in ownership." However, a change in ownership exclusion is available for transfers of property between parents and children under certain conditions.

Revenue and Taxation Code Section 63.1 details the terms and conditions to receive the parent-child change in ownership exclusion. Relevant to this bill, one requirement is that the parties involved must file a claim form with the assessor certifying to the parent-child relationship and providing specified information.

Subdivision (e) of Section 63.1 outlines the periods within which to file a claim. It requires that the claim be filed within three years after the date of the transfer of real property or prior to the transfer of the real property to a third party, whichever is earlier. However, even if a claim is not filed within this stated filing period, a claim is considered timely if it is filed within six months after the date the assessor mails a notice of supplemental or escape assessment informing the taxpayer that the property will be reassessed. If a claim form is made within the above described periods, then the transfer is excluded from change in ownership as of the initial date the property was transferred (i.e., property tax refunds would be issued for past years if the property was previously reassessed).

A claim for the exclusion may still be filed at any time after the periods outlined above; however, the exclusion will only become effective for the lien date in the assessment year in which the claim form is filed and the exclusion will not be retroactive to the date of transfer. That is, if a claim is made after the customary filing periods, then the pre-reassessment value will be reinstated as of the year the claim form is finally filed (i.e. property tax refunds are not issued for past years, but future property tax bills will reflect the lower assessed value).

AMENDMENT

Failure to File Claim after Written Notifications. This bill adds subdivision (j) to Section 63.1 to allow county board of supervisors, pursuant to the provisions of Chapter 12.5 (commencing with Section 54985) of Part 1 of Division 2 of Title 5 of the Government Code, to authorize a one-time processing fee of no more than $175, to recover costs incurred by the assessor for reassessment work done due to the failure of an eligible transferee to file a claim for the parent-child change in ownership exclusion after two written requests by the assessor.

A processing fee may be levied only if an eligible transferee had been previously sent two notices requesting that a claim be filed to which the transferee did not timely respond, as follows:

- **First Notice of Potential Eligibility.** The assessor must have notified the transferee in writing of potential eligibility for the parent-child exclusion requesting that a claim be filed within 45 days of the date of the notice of potential eligibility.
- **Second Notice of Potential Eligibility.** If a claim is not subsequently filed within 45 days of the date of the first notice, the assessor must have sent a second notice of potential eligibility notifying the transferee that a claim has not been received and that reassessment of the property will commence unless a claim for exclusion is filed within 60 days of the date of the second notice of potential eligibility. The second notice must also indicate that if a claim is filed outside the 60-day period, then a processing fee may apply.

If a transferee files a claim after these time periods, then the processing fee must be submitted with the claim. However, if the transfer of property is not ultimately eligible for the parent-child change in ownership exclusion, the processing fee will be refunded to the transferee.

45 and 60 Day Filing Periods Relate to Potential Processing Fee. The failure of a transferee to file a claim for exclusion within the 45 and 60 day period specified above has no effect on the granting of the exclusion. It only impacts whether or not an eligible transferee that eventually files a claim for the exclusion is subject to the processing fee. An eligible transferee that files a claim outside of these time periods would still receive the exclusion either on a retroactive or prospective basis depending upon the timing of the claim and the filing provisions specified by subdivision (e) of Section 63.1.

IN GENERAL

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

Proposition 58, which was approved by the voters of California in 1986, added subdivision (h) to Section 2 of Article XIII A of the California Constitution, and provides, in part, that the term "change in ownership" shall not include the purchase or transfer between parents and their children of:

- a principal residence, and
- the first $1 million of the full cash value of all other real property.

This “change in ownership exclusion” avoids reassessment of the property to its current market value. Consequently, children who acquire real property from their parents (or vice versa) can preserve their parent’s Proposition 13 protected value since the exclusion allows the property taxes on the property to remain the same after the transfer. There is no value limitation on property that qualifies as a principal residence and the value of the principal place of residence does not count towards the $1 million cap on transfers of all other real property transferred between parents and their children. However, any real property transferred after the $1 million assessed value ceiling is reached is subject to reassessment at current market value.

Proposition 193, approved by voters in 1996, amended Section 2 of the Constitution to apply the exclusion to transfers of real property from grandparents to grandchildren when all the parents of the grandchildren who qualify as children of the grandparents are deceased as of the date of transfer.

Revenue and Taxation Code Section 63.1 provides the statutory implementation for both Propositions 58 and 193.

BACKGROUND

As originally enacted, Section 63.1 required that a claim form be filed to receive the change in ownership exclusion, but it did not place any time limitations on filing the claim. Assembly Bill 3020 (Ch. 769, Statutes of 1988) was enacted to require that a claim be filed within three years of the date of transfer. Subsequently, at the request of Stanislaus County, Assembly Bill 3843 (Ch. 1494, Stats. 1990) added a provision that claims must be filed prior to the transfer of the property to a third party. The purpose of this amendment was to eliminate the county's cost of preparing retroactive assessment roll corrections in this type of situation. Inevitably, the establishment of these filing periods led to some taxpayers being denied the reassessment exclusion because the claim was not filed "timely." This, in turn, led to the enactment of Senate Bill 675 (Ch. 709, Stats. 1993) to provide an additional six month period for the taxpayer to file a claim at the time he or she is notified of a supplemental or escape assessment issued as a result of a purchase or transfer of the property.

Notwithstanding the various changes of law intending to make the filing period for the exclusion more generous, some taxpayers continued to miss the filing periods. As a result Senate Bill 542 (Senate Revenue and Taxation Committee, Ch. 941, Statutes of 1997) was enacted to allow the parent-child exclusion to be granted on a prospective basis at any time once a claim was eventually filed. This was intended to ensure that taxpayers were not permanently barred from receiving a constitutionally authorized benefit due to a statutory requirement. It was reasoned that establishing liberal time periods for filing a claim for the exclusion would prevent future challenges that such time limitations on filing a claim are unconstitutional. Article XIII A, Section 2, subdivision (h), of the California Constitution is a self-executing change in ownership exclusion for parent-child transfers of real property and does not expressly authorize the Legislature to establish filing requirements. By providing prospective but not retroactive relief, it was further reasoned that SB 542 would conform to Section 6 of Article XIII of the California Constitution, which states: "The failure in any year to claim, in a manner required by the laws in effect at the time the claim is required to be made, an exemption or classification which reduces a property tax shall be deemed a waiver of the exemption or classification for *that year*." With SB 542, any person that had been previously denied the exclusion due to a late-filed claim was able to file another claim and receive the change in ownership exclusion on a prospective basis.

COMMENTS

1. **Purpose.** The purpose of establishing a processing fee is to create an incentive for property owners to timely respond to requests by the assessor to file a claim for the parent-child change in ownership exclusion so that property will not be reassessed to its current market value. The processing fee further serves to recover the administrative costs the county incurs in reassessing and later reversing the reassessment in those cases where an eligible taxpayer eventually files a claim for the parent-child exclusion, but only after the property was reassessed.

2. **Amendments.** The **July 1, 2008** amendments deleted a provision that specified that any fees collected would be retained by the assessor, which had been added by the June 10 amendments. The **June 10, 2008** amendments (1) expressly provide that the county board of supervisors must authorize the fee, (2) specify that the fee will be collected at the time claim is submitted, (3) provide that the fee will be refunded if the transfer is not eligible for the exclusion, and (4) provide that fees collected are to be retained by the assessor.

3. **Reassessment of property to current fair market values can result in a significant increase in property taxes.** Change in Ownership Statements (COS) and Preliminary Change in Ownership Reports (PCORs) filed with grant deeds transferring ownership of a property ask property owners whether the transfer was between parents and children. This question serves to inform property owners of the exclusion and the need to file a claim to receive the exclusion, thereby, avoiding reassessment of the property. Taxpayers that check this box on the COS or PCOR which have not yet filed for the exclusion are mailed a claim form to complete and file. Additionally, if the assessor has any reason to believe that parties may have a parent-child relationship such as the same last name on a deed or a property transferred without financial consideration, a claim will generally be mailed to the new property owner. Despite repeated inquiries, some taxpayers do not take action until they are faced with the financial impact of various tax bills reflecting the reassessment of the property which can be significant.

4. **Confusion over filing deadlines?** There may be some taxpayer confusion with the apparent contradiction of the 45 and 60 day filing periods listed on the two proposed notices of potential eligibility with the filing deadlines noted on claim form which would likely accompany the notice. The failure of a transferee to file a claim for exclusion within the 45 and 60 day periods specified would have no effect on a taxpayer's eligibility for the exclusion. Rather it solely determines whether or not an eligible transferee that eventually files a claim for the exclusion would be subject to the processing fee. An eligible transferee that files a claim would receive the exclusion either on a retroactive or prospective basis depending on the timing and filing provisions specified by subdivision (e) of Section 63.1.

5. **Establishing the Fee is County Optional.** The proposed processing fee must be authorized by the county board of supervisors.

6. **Imposing the Established Fee is Assessor Optional.** The fee would only apply if the assessor sends the two required notices. And neither notice is mandatory. Thus, the assessor may send none, one, or both notices to a taxpayer.

7. **Related Bills**. Similar provisions are included in SB 1541 (Harman) which was referred to the Senate Revenue and Taxation Committee but not heard.

Senate Bill 1284 (Lowenthal) Chapter 524
Welfare Exemption – Low-Income Housing

Effective September 28, 2008. Amends Section 214 of, and adds Section 214.16 to, the Revenue and Taxation Code.

BILL SUMMARY

This bill extends the welfare exemption to "consent decree" low-income rental housing properties, as specified, that are not receiving government financing or income tax credits. This bill also cancels any outstanding property tax, including interest and penalties, due on qualifying properties.

Sponsor: Long Beach Affordable Housing Coalition (LBAHC)

LAW PRIOR TO AMENDMENT

Unlimited Exemption. Existing law provides that a low-income housing project owned and operated by a qualifying nonprofit organization may be exempt from property tax under the welfare exemption provided various conditions and requirements are met. Generally, a particular low-income housing property may qualify for the welfare exemption provided that:

- **Funding Source.** The nonprofit organization receives low-income housing tax credits or government financing for the property. §214(g)(1)(A) and §214(g)(1)(B)
- **Use Restriction.** The property is subject to a recorded deed restriction, regulatory agreement, or other legal document restricting its use for low-income housing purposes. For purposes of the welfare exemption, the property has low-income housing tax credits or government financing for the period of time that a regulatory agreement or recorded deed restriction restricts the use of all or any portion of the property for rental to lower income households even if the initial government financing has been refinanced or has been paid in full, or the allocation of the low-income housing tax credits has terminated or expired, provided that the government agency that is a party to the regulatory agreement continues to monitor and enforce compliance with the terms of the regulatory agreement. §214(g)(2)(A)(i) and Property Tax Rule 140
- **Property Tax Savings.** Savings are used to maintain affordability of, or reduce rents of units occupied by, the lower income households. §214(g)(2)(B)
- **Pro Rata Exemption.** If any of the individual units are not rented to low-income persons, then a partial exemption is available equal to the percentage of units serving lower-income households. §214(g)(1)
- **Limited Partnerships.** More strict provisions apply when a limited partnership owns the property in which a nonprofit organization is the managing general partner. §214(g)(2)(A)(ii)

Capped Exemption. When a nonprofit organization owns and operates a low-income housing property that does not receive any government financing or low-income housing tax credits, an exemption may be available but it is limited. The exemption is limited to the first $20,000 of property tax – which at a 1% tax rate equates to $2,000,000 of assessed value. The $20,000 exemption cap is not per property. It applies to all properties owned by the nonprofit organization. Provided the exemption cap has not been exceeded, a particular low-income housing property may qualify for the welfare exemption provided that:

- **Funding Source.** Not relevant.
- **Occupancy.** Ninety percent or more of the occupants of the property are lower income residents as specified. §214(g)(1)(C)
- **Use Restriction.** The property is subject to a recorded deed restriction, regulatory agreement, or other legal document restricting the property's use to low-income housing. §214(g)(2)(A)(i) and Property Tax Rule 140
- **Property Tax Savings.** Savings are used to maintain affordability of, or reduce rents of units occupied by, the lower income households. §214(g)(2)(B)
- **Pro Rata Exemption.** The remaining 10% could be rented to persons that are not low-income in which case the exemption would not apply to those units. §214(g)(1)

AMENDMENT

This bill amends Section 214(g)(1) to add new subparagraph (D) to provide that the welfare exemption may be granted to property used exclusively for low-income rental housing that "was previously purchased and owned by the Department of Transportation pursuant to a consent decree requiring housing mitigation measures relating to the construction of a freeway and is now solely owned by an organization that qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code."

Creating a specific category for "consent decree" properties eliminates the requirement that the nonprofit organization receive low-income housing tax credits or government financing on the property. This, in turn, effectively removes the $20,000 exemption cap for a nonprofit organization that owns consent decree properties in its portfolio of projects.

A "consent decree" low-income housing property may qualify for the welfare exemption provided that:

- **Property History.** It was once owned by the Department of Transportation and was related to the Keith v. Volpe consent decree and the Century Freeway Housing Program and its successors.
- **Funding Source.** Not relevant.
- Use Restriction. The property is subject to a recorded deed restriction, regulatory agreement, or other legal document. §214(g)(2)(A)(i) and Property Tax Rule 140
- **Property Tax Savings.** Funds not used to pay property taxes are used to maintain affordability of, or reduce rents of, units occupied by the lower income households. §214(g)(2)(B)
- **Pro Rata Exemption.** If any of the individual units are not rented to low-income persons, then a partial exemption is available equal to the percentage of units serving lower-income households. §214(g)(1)
- **Limited Partnerships.** Not allowed. Limited partnerships with a nonprofit organization serving as a managing general partner are not eligible under this provision. The property must be solely owned by the nonprofit organization. §214(g)(1)(D)(ii)

Cancels Outstanding Taxes. This bill also adds Section 214.16 to provide that any outstanding tax, interest, or penalty levied or imposed on a "consent decree" low-income property between January 1, 2002 and January 1, 2009 will be cancelled provided that the owner of the property certifies that certain conditions were met at the time the taxes were levied.

BACKGROUND

Prior to January 1, 2000, there were three possible ways to qualify for a property tax exemption on a low-income rental housing project owned by a nonprofit organization via the welfare exemption. These were:

1. At least 20% of the occupants were persons with low income.
2. The project was financed with tax-exempt bonds, government loans or grants.
3. The nonprofit organization was eligible for and received low-income housing income tax credits.

Assembly Bill 1559 (Stats. 1999, Ch. 927, Wiggins), operative January 1, 2000, deleted mere "occupancy" by persons with low income as a qualifying condition for the welfare exemption. This meant that to receive a property tax exemption, the low-income housing project must either be financed with government funds or qualify for income tax credits.

The purpose of AB 1559 was to revoke the property tax exemption from properties owned by certain owners of substandard housing. The bill was sponsored by the Los Angeles Housing Project, which had, in the course of investigating various substandard housing projects, discovered that some properties were receiving a property tax exemption under a provision which permits the property to qualify solely on the basis that the rents were low and the residents were low-income households. Presumably, the rationale for limiting the exemption to properties that had been financed with tax-exempt bonds, government loans or grants was that such properties would be subject to some level of government overview, and thus, ensure quality housing for the tenants.

However, the changes made by AB 1559 also resulted in some quality housing projects losing their property tax exempt status because they did not have government financing or tax credits. Consequently, follow up legislation, Assembly Bill 659 (Stats. 2000, Ch. 601, Wiggins), was enacted the next year to reinstate the exemption based on "occupancy" but with three changes:

1. The 20% occupancy threshold was raised to 90%.
2. An exemption cap of $20,000 of "tax" was created.
3. The property must be solely owned by a nonprofit organization -- limited partnerships in which the managing general partner is an eligible nonprofit corporation were specifically excluded.

COMMENTS

1. **Purpose.** This measure would ensure the continued affordability of a portion of the Century Freeway affordable housing portfolio without the need for additional public subsidies. According to the author, LBAHC purchased 12 developments in 2004 that had always been exempt from property taxes. However, due to the fact that LBAHC was able to purchase them without a public subsidy, they do not qualify for a continued exemption under current law. The author states that if LBAHC is required

to pay property taxes on this portfolio, the properties will operate in the red, and LBAHC's only option will be to sell the properties or refinance them with new public subsidy funds, in which case, ironically, the properties will qualify for a tax exemption again. This bill allows LBAHC to maintain ownership and the affordability of the units without having to use scarce affordable housing resources and without incurring large transaction costs to regain the exemption.

2. **Amendments.** The **August 8, 2008** amendments expressly provided that any interest or penalty associated with any outstanding taxes will also be cancelled. The **July 1, 2008** amendments expressly provided that the welfare exemption provisions for consent decree properties are not applicable to a property owned by a limited partnership in which a nonprofit organization is the managing partner. The **June 9, 2008** amendments effectively made the exemption retroactive to the date LBAHC purchased the properties by cancelling the outstanding taxes. The LBAHC, which had understood that the properties would continue to remain exempt from property tax under the welfare exemption, have not paid property taxes on these properties, which is currently delinquent.

3. **This bill would exempt the property from the ad valorem property tax, but not other special taxes or assessments.** Property eligible for various exemptions may still receive a property tax bill for other taxes, assessments, fees, or charges, related to the property that are imposed by local governments and collected via the property tax bill as direct levies. Thus, with respect to the provisions to cancel outstanding taxes, any outstanding direct levies on these properties would not be cancelled and payment would be required.

4. **The Consent Decree.** In 1972, a lawsuit, *Keith v. Volpe*, was filed in the United States District Court related to the then planned construction of the Century Freeway (I-105) in Los Angles County which was completed and opened to traffic in 1993. The lawsuit was eventually settled and a consent decree was issued in 1979 that, in part, required affordable housing be created to replace the housing that would need to be demolished to build the freeway. The Department of Transportation (CalTrans) was a party to the consent decree. The "Century Freeway Housing Program" was a state run program under the Department of Housing and Community Development (HCD) until 1995 when it was privatized and its assets transferred to the non-profit Century Housing Corporation.

5. **Consent Decree Properties.** The practical effect of creating a special category for qualified "consent decree" properties makes the funding source irrelevant by effectively eliminating the requirement that the nonprofit organization receive low-income housing tax credits or government financing on the property. All other conditions of the welfare exemption as it relates to low-income rental housing owned and operated by a nonprofit organization would continue to apply.

6. **The exemption cap has only been in place since 2000 and since then few nonprofit organizations that own low-income rental housing have exceeded the cap.** Most projects use government financing or tax credits and thus are not affected by the cap. The purpose of making public financing a key condition of receiving a property tax exemption was to prevent the owners of blighted and deteriorated housing for persons of limited means from receiving the welfare exemption by using a nonprofit organization as a front for the property owners in a limited partnership or by creating a non-profit organization on its own. The purpose of imposing a cap when public financing was not obtained was to ensure that if such

owners were still able to qualify for the exemption by creating a nonprofit organization, the extent of the exemption would be limited to no more than $20,000 in tax.

7. **These properties were purchased with conventional financing from a bank.** Proponents note that the ability of a nonprofit organization to use conventional financing is rare. In the case of LBAHC, it was possible because the properties were acquired at a relatively low cost due to the unique circumstances of these properties. They were a product of the consent decree and as such the chain of ownership has been from Caltrans to subsequent nonprofit organizations each committed to providing affordable low-income housing to the public.

Senate Bill 1495 (Kehoe) Chapter 594

Disabled Veterans' Exemption – Disasters

Effective January 1, 2009. Amend Sections 279 of the Revenue and Taxation Code.

BILL SUMMARY

This Board-sponsored bill, for purposes of the disabled veterans' property tax exemption, provides that a dwelling not occupied because of a misfortune or calamity or a home totally destroyed in a governor-declared disaster will continue to receive the exemption while the home is being reconstructed.

Sponsor: Board of Equalization

LAW PRIOR TO AMENDMENT

Existing law provides for a disabled veterans' property tax exemption in the amount of $111,276 or $166,944, depending on income. Section 279 of the Revenue and Taxation Code provides that, once the disabled veterans' property tax exemption is granted, it is to remain in continuous effect unless certain specified events occur. Relevant to this bill, one terminating event is that the owner does not occupy the dwelling as his or her principal place of residence on the property tax lien date (January 1). Another terminating event is when the property has been so altered that it is "no longer a dwelling."

Existing law is silent with respect to the continuity of the disabled veterans' exemption after an event that damages or destroys a home to the point that it becomes uninhabitable. Given the lack of express statutory direction, the Board has issued administrative guidance to assessors in which the continuity of the exemption depends upon the extent of damage to the dwelling, as noted in the explanation and table below.

Partial Damage. In the case of a home that has been partially damaged and is uninhabitable on the lien date, staff has opined that the exemption need not be cancelled pursuant to Section 279 on the basis that the home is no longer the "principal place of residence." Rather, staff has opined that if the homeowner intends to return to the home as soon as he or she is able to do so, the situation could be viewed as a temporary absence from the home and still be considered the homeowner's principal place of residence. This is so even though the owner might be renting a house or apartment in the interim.

Total Destruction. In the case of a home that has been completely destroyed, such as in a wildfire where homes are burned to the foundation, staff has opined that the exemption must be cancelled pursuant to Section 279 because a dwelling no longer exists on the property, and thus, it could not possibly be occupied as a principal place of residence. However, as soon as a home is rebuilt and occupied, the exemption can be restored.

EXTENT OF DAMAGE	EXEMPTION ELIGIBILITY
Partial	Continue
Total Destruction	Cancel, restore when home replaced and occupied.

AMENDMENT

Homes Destroyed in Governor-Declared Disasters. This bill amends Section 279 to allow a person who had been receiving the disabled veterans' exemption, and who subsequently suffers the complete loss of his or her home in a major disaster for which the governor issues a proclamation of a state of emergency, to retain the exemption, provided the person:

- continues to own the property,
- intends to rebuild a home on the property, and
- intends to occupy the home as his or her principal place of residence.

In practical application, this means that the exemption is to be applied to the remaining land portion of the assessment. *§279(a)(2)(C)*

Homes Destroyed in Non-Governor-Declared Disasters. This bill amends Section 279 to codify the Board's administrative recommendation to assessors when a home has been *destroyed*, and thus, on the lien date no dwelling exists. In this case, the property would not be eligible for the exemption until the structure has been replaced and occupied. *§279(a)(2)(B)*

Homes Partially Damaged in Any Type of Event. This bill amends Section 279 to codify the Board's administrative recommendation to assessors in the situation where a home is not occupied on the lien date due to partial damage related to a misfortune or calamity (including damage incurred in a major disaster for which the governor issues a proclamation of a state of emergency). In this case, the dwelling will be deemed to continue to be the person's principal place of residence provided that the absence is temporary and the person intends to return to the home when able to do so. *§279(a)(2)(B)*

The table below summarizes exemption eligibility after a home receiving the disabled veterans' exemption suffers damage. This bill codifies the Board's administrative recommendations, with the exception of allowing the exemption to be retained on a home totally destroyed in a governor-declared disaster.

EVENT	EXTENT OF DAMAGE	EXEMPTION ELIGIBILITY
Governor Declared	Total	Continue
Non-Governor Declared	Total	Cancel, restore when home replaced and occupied.
Any	Partial	Continue

IN GENERAL

Disabled Veterans' Exemption. Existing law provides for a "disabled veterans' exemption" which reduces the property tax assessed value of homes owned by qualified disabled veterans and, after their death, to the persons' surviving unmarried spouses. The disabled veterans' exemption is also provided to surviving spouses of persons who died on active duty.

The amount of exemption, which is automatically indexed each year, depends upon the claimant's income. For those with a household income below $49,969 (the "low income exemption"), the amount will be $166,944 in 2008-09. For all others (the "basic exemption"), the amount will be $111,296.

Disaster Relief - Property Reassessment for Property Owners. Section 170 of the Revenue and Taxation Code provides that property taxes may be reduced following a disaster, misfortune, or calamity in those counties where the board of supervisors has adopted an ordinance authorizing these provisions. These provisions apply to both governor-declared disasters and site-specific disasters 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 loss in value must be at least $10,000. 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.

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
Zaca Fire – Santa Barbara and Ventura County	2007	Stats. 2007, Ch. 224 (AB 62)
Angora Fire – El Dorado County	2007	Stats. 2007, Ch. 224 (AB 62)
Freeze	2007	Stats. 2007, Ch. 224 (AB 62)
Day and Shekell Fires - Ventura County	2006	Stats. 2007, Ch. 224 (AB 62)
Northern California Storms, Floods & Mudslides	2006	Stats. 2006, Ch. 396 (AB 1798)
Northern California Storms, Floods & Mudslides	2006	Stats. 2006, Ch. 897 (AB 2735)
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)

Other Related Legislation. In 2003, AB 322 (Stats. 2003, Ch. 278, Parra) was sponsored by the California Association of County Veteran's Services Officers to provide that property is deemed to be the principal place of residence of a disabled veteran who is confined to a hospital or other care facility, if that property would be that veteran's principal place of residence were it not for his or her confinement to a hospital or other care facility, provided the residence is not being rented out to a third party. This legislation codified the existing practices of many, but not all, counties in the situation where a disabled veteran enters a rest home and a spouse continues to reside in the home. Many counties allowed the exemption to remain on the property under the rationale that the absence from the home is temporary. However, a few counties considered the home to be ineligible for the exemption because it was no longer "the principal place of residence" of the veteran even when a spouse remained living in the home. Oddly, as soon as the veteran died, the home then re-qualified for the exemption since unmarried surviving spouses are eligible for the disabled veterans' exemption.

COMMENTS

1. **Purpose.** This measure is intended to codify the Board’s administrative recommendations related to exemption eligibility for the disabled veterans’ exemption after a misfortune or disaster. In addition, in order to provide parity between the homeowners’ and disabled veterans’ exemption following a disaster for which the governor issues a proclamation of a state of emergency, this bill will allow disaster victims that suffer the total destruction of their home to continue to receive the disabled veterans’ exemption while they rebuild.

2. **Existing law is silent.** The Board’s current advice to county assessors, with respect to both the homeowners’ exemption and the disabled veterans’ exemption, is that *damaged* homes may keep the exemption but *totally destroyed* homes may not. This written advice, found in Letter to Assessors 82/50, is specific to the homeowners’ exemption, but can be extended to the administration of the disabled veterans’ exemption.

3. **Rationale: A Temporary Absence.** When a home has been damaged to the point that it must be vacated for repairs but it is still standing, then under the rationale that the absence from the home is temporary, the home could still be considered the person’s principal place of residence. However, when a dwelling has been totally destroyed, such as a home razed in a wild fire, the property can not be eligible for the exemption as a principal place of residence.

4. **Beginning in 2003, legislation specific to the homeowners’ exemption has been enacted for every governor-declared disaster.** More than 4,000 homes were damaged or destroyed in the 2003 Southern California fires. And, of those, more than 60% were owner-occupied homes receiving the homeowners’ exemption. Given that so many homes were totally destroyed in the fires, special legislation was enacted regarding the homeowners’ exemption that applied to both damaged homes and totally destroyed homes. However, since then, legislation has become a standard practice and is enacted for every governor-declared disaster whether or not it is necessary to the case at hand.

5. **So what about the disabled veterans’ exemption?** Given recent legislative activity in this area, tax practitioners have questioned the correctness of the longstanding administrative practice to allow the exemption to continue on a damaged home receiving the disabled veterans’ exemption without similar authorizing legislation. Further, with respect to a home that is totally destroyed, disabled veterans would lose their special exemption and would have to pay property taxes on the full assessed value of the property after the disaster – which

even after a reassessment to reflect the damage – could result in a net increase in property tax at a moment of personal and financial distress.

6. **This bill would provide parity with provisions provided for the homeowners' exemption but uses general purpose language so that legislation is not necessary for each time a major disaster occurs.** While there are more than five million persons receiving the homeowners' exemption, there are fewer than 30,000 persons receiving the disabled veterans' exemption. Because of the few times a disabled veteran might be affected, it would not be prudent to amend the disabled veterans' exemption laws for each individual governor-declared disaster.

Senate Bill 1562 (Hollingsworth) Chapter 356

Grapevines and Trees Damaged by Fires or Strong Winds

Effective September 26, 2008. Amend Section 211 of the Revenue and Taxation Code.

BILL SUMMARY

This bill restarts the four-year property tax exemption period for newly planted fruit and nut bearing trees and three year exemption for grapevines currently in their exemption phase that must be pruned back as a result of specified disasters.

Sponsor: Senators Hollingsworth and Ducheny

LAW PRIOR TO AMENDMENT

Orchards and Vineyards. Fruit and nut bearing trees and grapevines are subject to property tax as "living improvements" but they are exempt from tax during a portion of their immature life. Article XIII, Section 3(i) of the California Constitution exempts from property tax fruit and nut trees planted in orchard form until four years after the season first planted. Grapevines planted in vineyard form are exempt for three years. The land in which the trees and grapevines are planted remains subject to tax.

Revenue and Taxation Code Section 211 restates the exemption provisions of the constitution. It additionally provides that, if a tree currently exempt from tax as a "new planting" is so damaged as a result of freezes occurring in December 1990, December 1998, and January 2007 that it must be pruned to the trunk or bud union to establish a new shoot, the pruning of the tree will be considered a "new planting" which restarts the exemption period for that tree. With respect to grapevines, these provisions are only applicable to the December 1990 freeze.

In addition to the exemption for newly planted orchards and vineyards provided by Section 211, Property Tax Rule 131 provides that the exemption period will also apply to individual trees or vines when a tree or vine is newly planted within an existing orchard or vineyard (i.e., a replacement tree or vine). It also provides that a new exemption period will be allowed when a tree or vine that has reached commercial production is grafted to the extent that it causes another non-producing period before the tree or vine will bear fruit, nuts, or grapes.

Once the exemption period expires and the trees or vines are subject to tax, Section 53 provides the initial base year value of the trees or vines for purposes of Proposition 13 will be the full cash value of the trees or vines as of January 1 on the first year they are taxable.

AMENDMENT

Orchards and Vineyards. This bill amends Section 211 to restart the four- and three-year exemption period for fruit and nut trees and grapevines that, while they were still in their exemption period, were so severely damaged by wildfires and strong winds that they required pruning to the trunk or bud union to establish a new shoot.

Revenue and Taxation Code	Governor's Proclamation	Counties Affected	Event Commencing
Section 211(a)(4)	Wind	1	October 20, 2007
Section 211(a)(5)	Wildfires	7	October 21, 2007

IN GENERAL

Disaster Relief. There are a variety of provisions in property tax law to provide property tax relief for disaster victims. These provisions address both the short term and the long term consequences of the disaster as it relates to current and future property tax liabilities. In the short term, property tax liability is redetermined to reflect the damage to the property and for some the next property tax installment payment may be deferred. Over the long term, property owners may rebuild or repair the damage to their property without incurring any increase in property tax liability. Alternatively, property owners may instead relocate rather than rebuild without being adversely impacted by the property tax consequences. The various provisions of law in the Revenue and Taxation Code are noted below.

Section	Property Type	Type of Relief Available	Type of Disaster
170	All property types	Reassessment	Any disaster or calamity
194 & 194.1	Real property and manufactured homes	Property tax deferral – next installment	Governor-proclaimed
195.1	Real property and manufactured homes	Property tax deferral – second consecutive installment	Governor-proclaimed
194.9	Real property and manufactured homes	Property tax deferral – supplemental assessment	Governor-proclaimed
69	All property types	Base year value transfer	Governor-proclaimed
69.3	Principal place of residence	Base year value transfer	Governor-proclaimed
69.5	Principal place of residence —over 55 or physically disabled	Base year value transfer	Any disaster or calamity
172 & 172.1	Manufactured home	Base year value transfer	Governor-proclaimed
70	Real property only	New construction exclusion	Any disaster or calamity
5825	Manufactured home	New construction exclusion; Base year value transfer	Any disaster or calamity

Property Taxation of Non-Williamson Act Land. Agricultural property is subject to the assessment rules of Proposition 13, in that it retains its base year value until new construction or a change in ownership takes place. Inflationary increases in assessment are limited to no more than two percent a year. Trees and vines are subject to property tax as "living improvements" and a base year value is established for them once the exemption period for new plantings ends. In addition to the typical costs of land preparation and planting, an investment in an orchard or vineyard is a long-term venture with a period of several years before any cash flow is realized. Both types of crops require several years to reach maturity, and the land is committed to that specific use with little flexibility to other uses. In recognition of this fact, the law exempts fruit and nut bearing trees and grapevines from taxation during a portion of their immature life. The taxation of the trees and vines is synchronized with their ability to produce a sellable crop. (The *land* on which the trees and vines are planted remains subject to taxation; it is only the *trees and vines* that are temporarily exempt.)

Property Taxation: California Land Conservation Act (Williamson Act). Under the Williamson Act, landowners may enter into contracts with participating cities and counties to restrict their lands to agricultural or open-space uses. The contract must be for a minimum term of 10 years, and are automatically renewed each year unless other action is taken. In exchange for entering into these contracts, the land and any living improvements (such as trees and vines) are valued according to their income earning ability. The valuation of land and improvements under these contracts is based on a statutory formula that capitalizes the income that the land is capable of producing from its agricultural use. The law also provides that each year, the property will be assessed at the lowest of the factored base year value, the Williamson Act value, or the current fair market value. In this way, landowners participating in the Williamson Act program are guaranteed that their land value will never be assessed at a greater value than noncontracted land.

BACKGROUND

Freeze Damage Related Pruning. Similar special purpose legislation was enacted for three severe freezes occurring in December 1990, December 1998 and January 2007.

Freezes	Type	Bill Number
December-1990	Trees & Grapevines	AB 1771 (Harvey) Stats. 1991, Ch.1034
December-1998	Trees	SB 1014 (Poochigian) Stats. 1999, Ch. 291
January-2007	Trees	AB 297 (Maze) Stats. 2007, Ch. 225

AB 1771 was the first bill to start a new exemption period for fruit or nut bearing trees or grapevines, damaged by the December 1990 freeze. AB 1771 was sponsored by the Kern County Assessor in an effort to provide relief to farmers who had vineyards and orchards still within the initial exemption period for newly planted vines and trees when the December 1990 freeze hit. SB 1014 was sponsored by the California Citrus Mutual. Grapevines were not included in this bill because they were not damaged by the 1998 freeze. AB 297 was sponsored by the author and similarly did not include grapevines.

COMMENTS

1. **Purpose.** The purpose of this bill is to restart the exemption period for young trees and grapevines damaged by specified wildfires and windstorms occurring in 2007.
2. **Amendments.** The **June 25, 2008** amendments extended the provisions of this bill to grapevines. The **May 27, 2008** amendments deleted provisions which would have allowed counties to enact an ordinance permitting taxpayers engaged in certain farming activities that were significantly impacted by specified disasters to defer their next property tax installment payment for one year without interest or penalty. The **May 19, 2008** amendments, which were related to the subsequently deleted provisions for property tax deferral, specified that: (1) the applications for deferral are to be made with the assessor, (2) the property owner is to estimate the

percentage revenue loss, and (3) the assessor may request additional information necessary to verify the revenue loss.

3. **Proclamations.** Related to this bill, the governor has issued two proclamations of a state of emergency for various counties as noted below:

   Wildfires. In October 2007, a proclamation was issued for more than 11 major wildfires burning in seven counties in Southern California at that time. Eventually there were a total of 23 fires that burned between October 20 and November 9, 2007.

Date	County
October 21, 2007	Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura

   Winds. On November 2, 2007, a proclamation was issued for extremely high winds and resulting damage that began about October 20, 2007.

Date	County
November 2, 2007	Riverside

4. **To avoid the need to introduce legislation for each specific disaster in the future, should general purpose provisions be considered instead?** The pruning provisions apply to a narrow class of trees and vines – those currently in an exemption period. Existing law already restarts the exemption period for trees and vines that must be pulled and replaced and for those that are grafted and no longer can produce a crop. Given the narrow scope of these provisions in practical application it may be preferable to make these provisions automatic whenever the governor issues a proclamation of a state of emergency for a county where the disaster affects trees or grapevines.

5. **Related Legislation.** Property tax backfill legislation for assessment reductions under Section 170 for the wildfires and wind storms was enacted through SB 1064 (Ch. 386, Hollingsworth).

Senate Constitutional Amendment 4 (Ashburn) Res. Chapter 115
Senate Bill 111 (Ashburn) Chapter 336

New Construction Exclusion – Seismic Safety Improvements

Operative only if voters approve Constitutional Amendment at the June 8, 2010 Primary Election. Amends Section 2 of Article XIIIA of the California Constitution and Section 70 and 74.5 of the Revenue and Taxation Code.

BILL SUMMARY

These bills, for purposes of the two seismic safety new construction exclusions, eliminates any distinction between the exclusions thereby deleting the 15 year time limit that applies to unreinforced masonry buildings.

Sponsor: California Assessors' Association

LAW PRIOR TO AMENDMENT

Two constitutional amendments, Proposition 23 in 1984 and Proposition 127 in 1990, provide a new construction exclusion for certain improvements made for seismic safety purposes.

- Proposition 23 amended Section 2(a) of Article XIII A of the California Constitution and Section 70(d) of the Revenue and Taxation Code is the implementing statute.
- Proposition 127 amended Section 2(c)(4) of Article XIII A of the California Constitution and Section 74.5 of the Revenue and Taxation Code is the implementing statute.

Section 70(d) applies only to buildings with "unreinforced masonry bearing walls." These are walls that are built with bricks, cement blocks, or other types of masonry material, which do not have steel reinforcing bars. This section only applies if the building must be improved to comply with a local ordinance, such as a county or city mandatory strengthening program. This exclusion applies to qualifying construction completed on or after January 1, 1984 and is limited to the first 15 years after the work is completed.

Section 74.5 applies to any qualifying construction other than work that would fall under the 15 year new construction exemption for unreinforced masonry structures provided under Section 70(d). Qualifying construction includes (1) seismic retrofitting improvements, as defined, and (2) improvements utilizing earthquake hazard mitigation technologies, as defined. Unlike Section 70(d), it is not necessary that the qualifying construction be mandated by a local government. In addition, this exclusion applies to qualifying construction completed on or after January 1, 1991 and the exclusion is not subject to any time limit.

Comparison of Seismic Safety Exclusions

	PROPOSITION 23	PROPOSITION 127
Year Approved	1984	1990
Constitutional Amendment	Art. XIII A, Sec. 2(a)	Article XIII A, Sec. 2(c)(4)
Revenue &Taxation Code	Section 70(d)	Section 74.5
Time Limit	15 years (unless there is a change in ownership before 15 years)	None (until there is a change in ownership)
Building Type	Unreinforced masonry	Any - except a masonry building qualifying under §70(d)
Mandated Improvements	Yes	No
Qualifying Improvements	Those necessary to comply with local ordinance	Seismic retrofitting improvements Improvements utilizing earthquake hazard mitigation technologies (Applies to buildings identified by local government as unsafe in an earthquake)
Assessor Assistance in Identifying	Certificate of Compliance from local government requiring improvements	Building Department reports value
Improvements Expressly Not Covered	Anything not necessary to comply with the ordinance	Alterations, such as new plumbing, electrical, or other added finishing materials
Board Prescribed Claim Form	No	Yes
Claiming	Certificate of compliance from local entity within 6 months of completion	Property Owner notify intent to claim within 30 days of completion Six months to provide all documentation

AMENDMENT

Senate Constitutional Amendment. Senate Constitutional Amendment (SCA) 4 proposes to delete the current provisions of Section 2(a) and Section 2(c)(4) of Article XIII A of the California Constitution and instead provide in new Section 2(a) that the term “newly constructed” does not include that portion of an existing structure that consists of the construction or reconstruction of **seismic retrofitting components**, as defined by the Legislature.

Companion Implementing Statutory Amendments to the Revenue and Taxation Code. If SCA 4 is approved by voters in 2010, then the provisions of SB 111 would become operative. The statutory amendments delete from Section 70 the provisions related to the seismic safety new construction exclusion for unreinforced masonry buildings and amend Section 74.5 to allow its provisions to apply to unreinforced masonry buildings. Subdivision (e) of Section 74.5, which this bill deletes, provides that Section 74.5 is not applicable to any property that qualifies for the exclusion under Section 70.

The practical effect of these amendments is to eliminate the 15 year time limit on the exclusion for unreinforced masonry buildings and provide an exclusion that parallels the one currently provided to all other property types under the provisions of Section 74.5. The table below summarizes the proposed changes.

Changes to Exclusion for Unreinforced Masonry Buildings

	CURRENT LAW	PROPOSED LAW
Time Limit	15 years	Removed
Mandated Improvements	Yes	Requirement Deleted
Qualifying Improvements	That necessary to comply with the local ordinance	New Definitions "Seismic Retrofitting Components" • Seismic retrofitting improvements • Improvements utilizing earthquake hazard mitigation technologies
Assessor assistance in identifying	Certificate of Compliance from local government requiring improvements	Building Department (after certification from property owner)
Improvements Expressly Not Covered	Anything not necessary to comply with the ordinance	Alterations, such as new plumbing, electrical, or other added finishing materials
Claiming	File certificate of compliance within 6 months of completion	Reduced from six months to within 30 days of completion with six months to provide all documentation

This bill also amends Section 74.5 to provide a more precise definition of qualifying improvements. That definition is "that portion or an existing structure that consists of the construction or reconstruction of **seismic retrofitting components**, as defined in this section."

The statutory definition for the new phrase "seismic safety components" used in the constitution would be based on the existing definitions of the phrases "seismic retrofitting improvements" and "improvements utilizing earthquake hazard mitigation technologies." This bill would make corresponding amendments to substitute the phrase "seismic retrofitting components" for "seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies" throughout the text of the section.

In addition, it clarifies that the Building Department reports the costs, rather than the value, of these components to the assessor.

The changes to Section 74.5 are summarized in the table below.

Changes to Exclusion Under Section 74.5

	CURRENT LAW	PROPOSED LAW
Qualifying Improvements	**"Improvements"** Seismic Retrofitting Improvements Improvements utilizing earthquake hazard mitigation technologies	Specific portion of construction or reconstruction of **"seismic retrofitting components**"
Definition of Qualifying Improvements Seismic Retrofitting Improvements Improvements utilizing earthquake hazard mitigation technologies	No Change	No Change
Property Owner Certifies to Building Department	Those portions of the project that are "**qualifying improvements"**	Those portions of the project that are "**seismic retrofitting components"**
Building Department Reports To Assessor	**"Value"** of those portions of the project that are qualifying improvements.	**"Costs**" of the portions of the project that are seismic retrofitting components

Legislative Declarations. Subdivision (e) is added to Section 74.5 to expressly specify that buildings currently receiving the 15 year exclusion under Section 70(d) will not be reassessed after the 15 year time period expires and that they will continue to receive the exclusion beyond the 15 year period, unless the property changes ownership.

IN GENERAL

Property Tax System. Article XIII, Section 1 of the California Constitution provides that all property is taxable, at the same percentage of "fair market value," unless specifically exempted, or authorized for exemption, within the Constitution. Article XIII A, Section 2 of the California Constitution defines "fair market value" as the assessor's opinion of value for the 1975-76 tax bill, or, thereafter, the appraised value of property when purchased, newly constructed, or a change in ownership has occurred. This value is generally referred to as the "base year value." Barring actual physical new construction or a change in ownership, annual adjustments to the base year value are limited to 2 percent or the rate of inflation, whichever is less. Article XIII A, Section 2 of the California Constitution provides for certain exclusions from the meaning of "change in ownership" and "newly constructed" as approved by voters via constitutional amendments.

New Construction. The California Constitution does not define the term "new construction." Revenue and Taxation Section 70 defines it, in part, to mean:

> Any addition to real property, whether land or improvements (including fixtures), since the last lien date.
>
> Any alteration of land or improvements (including fixtures) since the lien date that constitutes a "major rehabilitation" or that converts the property to a different use. A major rehabilitation is any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture.

With respect to any new construction, the law requires the assessor to determine the added value upon completion. The value is established as the base year value for those specific improvements qualifying as "new construction" and is added to the property's existing base year value. When new construction replaces certain types of existing improvements, the value attributable to those preexisting improvements is deducted from the property's existing base year value. (Section 71)

New Construction Exclusions. Over the years, Article XIII A, Section 2 of the California Constitution has been amended to specifically exclude certain types of construction activity from assessment as "new construction." Consequently, while these improvements may increase the value of the property, the additional value is not assessable.

Prop	Year	Subject	Code	Time Limit
8	1978	Disaster Reconstruction	§70(c)	No
7	1980	Active Solar Energy Systems	§73	No
23	**1984**	**Seismic Safety (Unreinforced Masonry)**	**§70(d)**	**Yes**
31	1984	Fire Safety Systems	§74	No
110	1990	Disabled Access Improvements (Homes)	§74.3	No
127	**1990**	**Seismic Safety Retrofitting & Hazard Mitigation**	**§74.5**	**No**
177	1994	Disabled Access Improvements (All Properties)	§74.6	No
1	1998	Environmental Contamination Reconstruction	§74.7	No

Seismic Safety New Construction Exclusions. Section 70(d) implements Proposition 23, approved by voters in 1984, and Section 74.5 implements Proposition 127, approved by voters in 1990. These propositions amended Section 2 of Article XIII A of the California Constitution to provide a new construction exclusion for certain seismic safety improvements.

BACKGROUND

These bills are similar to SB 1633 (Ashburn) and SCA 28 (Ashburn) of 2006 which passed the Senate but were not heard in the Assembly.

COMMENTS

1. **Purpose.** This measure provides for the deletion of the 15 year time limitation for qualified improvements made to unreinforced masonry buildings.
2. **Amendments.** The **April 17, 2007** amendments added Senator Migden as a co-author and identified SCA 4 as the companion constitutional measure.
3. **This bill would ensure equal treatment of property owners who incorporate seismic safety improvements when they remodel an existing building regardless of the *type* of building.** Currently, two property owners that install the same types of seismic safety improvements would be treated differently for property tax purposes depending upon whether or not the building is a masonry structure. One receives a permanent exclusion from reassessment, and the other, the owner of an un-reinforced masonry building, which is most likely an older, potentially historic building, would only receive a 15-year temporary exclusion.
4. **Except for the provisions for unreinforced masonry buildings, all other new construction exclusions remain in effect until the property changes ownership.** Generally, new construction exclusions remain in effect until the property changes ownership, at which point the entire property, including the portion of the property (or additional value) previously excluded from taxation via the new construction exclusion, is subject to reassessment to current market value pursuant to the change in ownership provisions of Proposition 13.
5. **This bill would allow homeowners whose residences were damaged or destroyed as a result of severe freezing conditions and any other related casualty 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. This disaster occurred after the lien date. A home damaged or destroyed after January 1, 2007, such as any home damaged or destroyed by the freeze which commenced on January 11, would continue to be eligible for the exemption on the 2007-08 regular property tax bill. However, if such a home is not rebuilt and occupied by the next lien date, January 1, 2008, then it is not eligible for the exemption on the 2008-09 regular property tax bill.
6. **Why the 15 year time limit**? Supporters note that there is no sound policy reason to limit the exclusion to 15 years for unreinforced masonry buildings given the unlimited exclusion for other types of seismic safety improvements. Proposition 23 was one of the very first new construction exclusions ever enacted after Proposition 13. No other constitutional amendment since then has ever imposed a time limit on the exclusion. Removing the time limit would make these provisions consistent with all other exclusions.
7. **In practical application, few masonry buildings are reassessed after the 15 year period expires**. The 15-year time limit creates a 15 year administrative burden for taxing officials. Based on responses to a Board survey on new construction issues, many counties do not track 15-year new construction exclusion claims. Additionally, several counties do not assign a value to seismic retrofits, and many

treat retrofit as a maintenance item which is not assessable as new construction. Furthermore, in some cases the property changes ownership before the 15 year limit has been reached, thus requiring a full reassessment of the property.

8. **Masonry buildings currently in the 15 year time window.** Buildings currently receiving a 15 year exclusion would continue to receive the exclusion as provided in Section 74.5(e) pursuant to the Legislative findings and declarations.

TABLE OF SECTIONS AFFECTED

SECTIONS		BILL NUMBER	CHAPTER NUMBER	SUBJECT
California Constitution				
Article XIIIA Section 2*	Add	SCA 4	Res. Ch. 115	Valuation of real property
Revenue & Taxation Code				
§63.1	Amend	SB 1233	Ch. 349	Transfers between parents and their children
§70*	Amend	SB 111	Ch. 336	"Newly constructed"; "new construction"
§73	Amend	AB 1451	Ch. 538	"Newly constructed"; "new construction"; exclusion
§74.5*	Amend	SB 111	Ch. 336	Seismic retrofitting improvements
§75.24	Add	AB 3035	Ch. 201	Supplemental assessments
§211	Amend	SB 1562	Ch. 356	Trees and vines
§214	Amend	SB 1284	Ch. 524	Welfare exemption
§214.16	Add	SB 1284	Ch. 524	Welfare exemption – low-income housing
§218	Amend	SB 1064	Ch. 386	Homeowner's exemption
§279	Amend	SB 1495	Ch. 594	Disabled veterans' exemption; effective dates
§469	Amend	AB 550	Ch. 297	Audit of profession, trade, or business

* Operative only if voters approve SCA 4 at the June 8, 2010 Primary Election.