California State Board of Equalization,
Legislative and Research Division

LEGISLATIVE BULLETIN

State Capitol Building (from the East) c.1945
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PROPERTY TAX LEGISLATION
2011

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Assembly Bill 75 (Hill) Chapter 269

Deceptive Business Solicitations Implying Governmental Connection

Effective January 1, 2012. Among its provisions, amends Sections 17533.6 and 17537.9 of the Business Professions Code.

BILL SUMMARY

Related to deceptive business solicitations that imply an official government connection, this bill, among other things:

- Prohibits the use of the term "assessor" in the title, trade or brand name of any solicitation that reasonably could be interpreted or construed as implying a governmental connection. *Business & Professions Code §17533.6*
- Prohibits additional business names from being used by assessment reduction filing service firms and modifies font size requirements on disclosures printed on advertisements. *Business & Professions Code §17537.9*

Sponsor: Assembly Member Hill

LAW PRIOR TO AMENDMENT

Deceptive Solicitations - Generally

Business and Professions Code (BPC) Section 17533.6 makes it unlawful for a nongovernmental entity to solicit funds or information by means of a mailing, electronic message, or Internet Web site that contains a seal, insignia, trade, or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any state or local government connection, approval, or endorsement, unless the nongovernmental entity has an expressed connection with a state or local entity or unless the solicitation contains specified disclosures in conspicuous and legible type.

Deceptive Solicitations - Assessment Reduction Filing Services

BPC Section 17537.9, relating to property assessment reduction filing services, restricts the activities of individuals who offer, for a fee, to apply for a reduction in property tax on behalf of the owner. Related to this bill:

Business Name Prohibitions. Among its many provisions, BPC Section 17537.9 specifies that it is unlawful for a business offering these services to imply that it is associated with a government entity. BPC Section 17537.9 (a)(6)(B) expressly provides that the use of a business name with the word "appeal" or "tax" with the word "agency" "assessor," "bureau," "department," "division," "federal," "state," "county," "city," or "municipal," or the name of any city, county, city and county, or any governmental entity is a violation of this provision.

Disclosure on Advertisements. BPC Section 17537.9(b) requires the top of every page of advertisement or promotional material disseminated by an offferor of an assessment reduction filing service to display in 12-point boldface font the following disclosure in a box formed with a heavy line:

THIS ASSESSMENT REDUCTION FILING SERVICE IS NOT ASSOCIATED WITH ANY GOVERNMENT AGENCY. IF YOU DISAGREE WITH THE ASSESSED VALUE OF YOUR PROPERTY, YOU HAVE THE RIGHT TO AN INFORMAL ASSESSMENT REVIEW, AT NO COST, BY CONTACTING THE ASSESSOR'S OFFICE DIRECTLY. IF YOU AND THE ASSESSOR CANNOT AGREE TO THE VALUE OF THE PROPERTY OR IF YOU DO NOT WISH TO CONTACT THE ASSESSOR YOU CAN OBTAIN AND FILE AN APPLICATION FOR CHANGED ASSESSMENT WITH THE COUNTY BOARD OF EQUALIZATION OR ASSESSMENT APPEALS BOARD ON YOUR OWN BEHALF. AN APPEALS BOARD HAS THE AUTHORITY TO RAISE PROPERTY VALUES (BUT IN NO CASE HIGHER THAN THE PROPOSITION 13 PROTECTED VALUE) AS WELL AS TO LOWER PROPERTY VALUES.

AMENDMENTS

Deceptive Solicitations – Generally

With respect to property tax matters, this bill amends BPC Section 17533.6 to, among other things, provide that a solicitation may not use a title or trade or brand name that reasonably could be interpreted or construed as implying any federal, state, or local government connection, approval, or endorsement, including, but not limited to, use of the term "agency," "administrative," "**assessor,"** "board," "bureau," "collector," "commission," "committee," "department," "division," "recorder," "unit," "federal," "state," "county," "city," or "municipal," or the name or division of any government agency. Additionally, the solicitations may not specify any sort of "due date" or imply that there will be penalties, fines, or consequences if the payment being solicited is not made. Further, additional disclosures must be conspicuously displayed as specified.

Deceptive Solicitations - Assessment Reduction Filing Services

Additional Business Name Prohibitions. This bill prohibits the words "board" or "commission" from being used with the word "appeal" or "tax" in the business name of an assessment reduction filing service. *BPC §17537.9 (a)(6)(B)*

Disclosure: Largest Font Size. The bill changes the font size requirement for the disclosure that must be on the top of every page of advertisement or other promotional materials. Specifically, the font type of the disclosure must be not less than a 12-point boldface font type that is at least 2-point boldface font type sizes larger than the next largest print on the page. *BPC §17537.9(b)(2)*

COMMENT

Purpose. This bill is intended to address consumer complaints about deceptive solicitations crafted to mislead persons into believing they are paying a necessary fee to a governmental agency. As business solicitations meet the letter of the law but still mislead recipients, additional changes to these statutes are required.

Assembly Bill 188 (Block & Butler) Chapter 202

Disabled Veterans' Exemption

Effective January 1, 2012. Amends Section 205.5 and 279 of the Revenue and Taxation Code.

BILL SUMMARY

Related to the disabled veterans' property tax exemption, this bill:

- Ensures that an unmarried surviving spouse receiving the disabled veterans' property tax exemption on their home will continue to be eligible if he or she is confined to a hospital or care facility. *§205.5*
- Consolidates the effective and termination dates of the exemption into one section of law. *§279*

Sponsor: Board of Equalization

LAW PRIOR TO AMENDMENT

Article XIII, Section 4 of the California Constitution provides that the Legislature may exempt from property tax, in whole or in part, the home of a person or a person's spouse, if the person, because of injury or disease incurred in military service, is totally disabled. This exemption is commonly referred to as the "disabled veterans' exemption." The disabled veterans' exemption is also available to the unmarried surviving spouse of a person who dies while on active military duty or to the unmarried surviving spouse of a veteran who may or may not have already been receiving the exemption but later dies as a result of a service connected injury or disease.

Revenue and Taxation Code Section 205.5 is the implementing statute. It provides that "totally disabled" means a veteran who has a disability rating from the USDVA or the military service from which the veteran was discharged at 100 percent or has a disability compensation rating at 100 percent because he or she is unable to secure or follow a substantially gainful occupation. The exemption, which is compounded annually by an inflation factor, has two tiers, depending upon the claimant's income.

For the 2011-12 fiscal year, the disabled veterans' exemption amount will be $175,269 of assessed value for those with a household income below $52,470 (the "low income exemption"). For all others, the disabled veteran's exemption amount will be $116,845 (the "basic exemption").

QUALIFICATION	BASIC	LOW INCOME
Veteran DISABILITY RATING = 100% DISABILITY COMPENSATION = 100% Blind LOSS OF TWO OR MORE LIMBS **Spouse of Qualified Veteran** SURVIVING SPOUSE OF DISABLED VETERAN SURVIVING SPOUSE OF PERSON WHO DIED ON ACTIVE DUTY SURVIVING SPOUSE OF PERSON WHO DIES OF A SERVICE- CONNECTED INJURY OR DISEASE	**$116,845*** *$100,000 as adjusted for inflation	**$175,269*** *$150,000 as adjusted for inflation **Household Income less than $52,470

Occupancy Requirements. Existing law provides that a property is not eligible for the disabled veterans' property tax exemption if the owner does not occupy the property as his or her principal place of residence on the lien date. An exception is made in Section 205.5(b)(2) 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 that the residence is not rented or leased to a third party. A family member that resides at the residence is not considered to be a third party.

Revenue and Taxation Code Section 279 provides that a claim for the disabled veterans' property tax exemption, once granted, shall remain in effect until:

- title to the property changes,
- the owner does not occupy the home as his or her principal place of residence on the lien date, unless:
  - the veteran is, on the lien date, confined to a hospital or other care facility but principally resided at the dwelling immediately prior to that confinement (provided the property is not rented or leased to a third party).
  - the dwelling is not occupied on the lien date because it was damaged in a misfortunate or calamity.
- the veteran is no longer disabled as defined in Section 205.5, or
- the property is altered so that it is no longer a residence.

With respect to this bill, while existing law addresses the case of a *disabled veteran* who is confined to a hospital or other care facility it is silent in the case of an unmarried surviving spouse.

Effective Dates. Numerous sections of law (Sections 75.22, 205.5, 276.1 and 276.2) specify the effective date of the disabled veterans' exemption pursuant to various circumstances. As noted above, once granted, Section 279 provides that the disabled veterans' exemption will remain in continuous effect until specified events occur. Sections 276.3 and 279.5 provide that when a property no longer qualifies for the exemption, the exemption is to be immediately cancelled.

AMENDMENT

Occupancy Requirements. This bill amends Section 205.5 of the Revenue and Taxation Code to expressly provide that property is deemed to be the principal place of residence of the unmarried surviving spouse of a deceased veteran who is confined to a hospital or other care facility if that property would be the unmarried surviving spouse's principal place of residence were it not for his or her confinement to a hospital or other care facility. This will allow the spouse to continue to receive the disabled veterans' property tax exemption.

Effective Dates. This bill adds subdivision (a) to Section 279 to consolidate into that section of law the effective date of the disabled veterans' exemption for specified situations. This is a nonsubstantive change, since the effective dates are set forth by other sections of law. The effective dates for the disabled veterans' property tax exemption, subject to the provisions regarding cancellations and the limitation periods on refunds, are as follows:

- **Delayed Disability Rating.** The effective date of disability as determined by the USDVA. *Section 276.1*
- **New Home Purchase.** The date a qualified claimant purchases a property that constitutes the principal place of residence, provided residency is established within 90 days of purchase. *Sections 75.22 and 276.2*
- **Rental or Second Home Conversion.** The date a qualified claimant establishes principal place of residence at a property owned by the claimant or the spouse. *Section 276.2*
- **Post-Death Qualification.** The date the veteran died, in the event the USDVA rules that the death was a result of a service-connected injury or disease. *Section 205.5(c)(1)(B)*

Termination Dates - Remarriage. This bill adds paragraph (5) to Section 279(b), which lists the events that terminate exemption eligibility, to include when an unmarried surviving spouse remarries. (Under existing law, if the former surviving spouse subsequently becomes unmarried due to divorce or death, eligibility is re-established as of the date of death or divorce.) *Section 205.5 (c)*

Technical Provisions. This bill amends Section 279 to delete language referencing the lien date throughout the text in order to be consistent with Sections 276.2 and 276.3. Additionally, the bill amends Section 279 to use the phrase "claimant" and "qualified claimant" throughout.

BACKGROUND

AB 322 (Parra, Stats. 2003, Ch. 278) was sponsored by the California Association of County Veteran's Services Officers to ensure that a disabled veteran who enters a rest home will continue to receive the exemption on his or her home. The practice of some counties is to disqualify the property from receiving the exemption in this situation.

AB 322 included a statement of intent providing that the Legislature finds and declares the following:

- There are many disabled veterans who own property that qualifies for the disabled veterans' property tax exemption, but due to the fact that these disabled veterans are confined to hospitals or other medical institutions they are unable to occupy that property as their principal places of residence. In many cases the spouses of these disabled veterans continue to occupy the property as their principal places of residence.
- It is the intent of the Legislature in enacting this act to amend the Revenue and Taxation Code to conform with the California Constitution to further extend the disabled veterans' property tax exemption to property owned by the spouse of a living disabled veteran while that disabled veteran is confined to a hospital or other care facility and to extend the disabled veterans' property tax exemption to an otherwise qualifying veteran who is unable to occupy that property as his or her principal place of residence because he or she is confined to a hospital or other care facility, provided that the property is not rented or leased to a third party.

AB 322 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 due to the technicality that it is

no longer "the principal place of residence" of the veteran even when a spouse is residing in the home. In these counties, if the veteran were to subsequently die, the home would re-qualify for the exemption since unmarried surviving spouses are eligible for the disabled veterans' exemption.

Prior to AB 322, existing law and regulations were silent on this issue. However, there was BOE guidance on this subject as it relates to the homeowners' exemption. Letter to Assessors 82/50 advises that a homeowner's "temporary absence" from a home would not disqualify the home from the homeowners' exemption provided the home is not rented or leased to others on the lien date. With respect to the situation where a parent is confined to a rest home and an adult child resides in the home, BOE has advised that if the parent is expected to return and rent is not charged, the homeowners' exemption may continue. However, an absence of more than one year might raise questions as to whether the home is still the parent's principal residence. Some counties had extended this written advice to the disabled veterans' exemption prior to the enactment of AB 322.

COMMENTS

1. **Purpose.** To (1) ensure that an unmarried surviving spouse who is receiving the disabled veterans' exemption will continue to receive the exemption if the surviving spouse is confined to a hospital or care facility and (2) consolidate into one section of law the effective and termination dates of the disabled veterans' property tax exemption.
2. **Amendments.** The June 29. 2011 amendments incorporated provisions previously contained in AB 946 (Butler) which were also BOE-sponsored.
3. **Issue – Occupancy.** The original legislation related to occupancy requirements, AB 322 (Parra, Stats. 2003, Ch. 278), neglected to include unmarried surviving spouses. The inequity of revoking the exemption where a person must enter an assisted living facility was corrected in 2003, but unmarried surviving spouses were not expressly extended the same benefit. This bill would amend Section 205.5 to remedy this oversight.
4. **Issue – Effective Dates.** The current laws on the disabled veterans' exemption are widely dispersed and lack cross references. While Section 279 lists the events that would cause the exemption to be terminated, it does not specify those events that allow the exemption to be granted. Furthermore, it does not specify the effective date for each of those various circumstances. The changes made by this bill are nonsubstantive but improve the administration of the exemption by providing a complete and accurate list of key events in one section of code.
5. **Complete, Accurate, and Reader Friendly.** Complete and accurate information in a single section of code greatly assists tax administrators and tax practitioners. Consolidation of the provisions will serve to reduce errors in the administration of the exemption, make important dates more accessible, and better educate those eligible for the exemption. It is particularly useful to those who are new to this area of law or who address these issues infrequently. Additionally, making this area of law more user-friendly will better meet the needs of disabled veterans, surviving spouses, and others who assist them in claiming the exemption by ensuring that the exemption is being granted on their home as of the earliest possible date and informing them of the events that will cause ineligibility.

Assembly Bill 563 (Furutani) Chapter 320

Confidential Assessor Records – City Access

Effective January 1, 2012. Adds Sections 408.4 to the Revenue and Taxation Code.

BILL SUMMARY

This bill allows specified city finance department employees to obtain or access otherwise confidential information held by the county assessor when conducting an investigation to determine whether the documentary transfer tax should be imposed for an unrecorded change in control or change in ownership of property.

Sponsor: City of Los Angeles

LAW PRIOR TO AMENDMENT

The law requires that assessors keep certain information confidential. Revenue and Taxation Code Section 408(a) contains the general confidentiality rule for county assessors and provides that homeowners' exemption claims and any information and records in the assessor's office that are *not required*[1] by law to be kept or prepared by the assessor are not to be open to public inspection. In addition, Sections 451 and 481 provide that all information requested by the assessor or furnished in the property statement and change in ownership information shall be "held secret" by the assessor.

Subdivision (b) of Section 408 provides an exception to the general rule of confidentiality for certain governmental agencies or representatives. It requires that the assessor disclose information, furnish abstracts, or permit access to all records in his or her office to those agencies or representatives specified.

Part 6.7 of Division 2 of the Revenue and Taxation Code (§§11901-11935) relates to the documentary transfer tax (DTT) for counties and general law cities. Charter cities may also levy a DTT pursuant to a local ordinance and their own authority under the "municipal affairs" doctrine[2]. The locally imposed documentary transfer tax is generally collected by the county recorder at the time documents are presented for recording.

AMENDMENT

City Employee Access. This bill adds Section 408.4 to the Revenue and Taxation Code to require the assessor to disclose information, furnish abstracts, or permit access to records in the assessor's office to designated employees of a city's finance office for purposes of conducting an investigation to determine whether a DTT should be imposed for an unrecorded change in control or change in ownership of property.

Conditions for City Employee Access. Related to the access to confidential assessor records and information, this bill:

- Requires written request for access.
- Requires the designated employee of a city's finance office to certify to the assessor, under penalty of perjury:

[1] There are only very limited records that are required to be kept by the assessor, such as the assessment roll and the list of property transfers.

[2] Under the constitutional "municipal affairs" doctrine, charter cities can levy taxes which have not been preempted by the state or federal governments (Article XI, §5)

(1) that the information is needed to assist with the preparation and enforcement of Part 6.7 (commencing with Section 11901) of Division 2, and

(2) that the information provided that is not public record and that is not open to public inspection shall not become public record and shall not be open to public inspection.

- Prohibits the assessor from disclosing social security numbers to the city employee.

Reimbursement. This bill requires the city to reimburse the assessor for any costs incurred in disclosing, furnishing, or permitting access to this information.

IN GENERAL

Documentary Transfer Tax. The DTT was enacted by Ch. 1332 of the Statutes of 1967 and became operative on July 1, 1968 to replace the repealed Federal Documentary Stamp Tax (former 26 U.S.C.§§4361, 4363). It authorizes counties to approve an ordinance to impose a documentary transfer tax, which applies to deeds of transfer of realty within that jurisdiction and is based on the value of the transfer. In counties, the rate is fifty-five cents ($0.55) for each five hundred dollars ($500) of value. While the rate in statute is stated per $500, in practice the rate is often expressed as $1.10 for each $1,000 of value. All of California's 58 counties apply the tax, which is modeled after the previously imposed Federal Stamp Tax. Cities are also allowed to enact ordinances to impose the tax as follows:

General law cities (non-charter cities) within a county that impose a DTT may apply the tax at half the county rate and it applies as a credit against the county tax (i.e., the total rate will still be fifty-five cents ($0.55) for each five hundred dollars ($500) of value and the city and county will equally share in the proceeds). As of 2010, there were 361 general law cities.

Charter cities may impose a DTT at a higher rate under the municipal affairs doctrine of the California Constitution (Article XI, Section 5). If they impose a DTT at a higher rate than the non-charter rate, then the city DTT does not serve as a credit against the county tax. The tax imposed by cities is referred to as the Documentary Transfer Tax, the Real Property Transfer Tax, or the Real Estate Transfer Tax. The provisions in the Revenue and Taxation Code do not apply to charter cities. Section 2 of Ch. 1332, Stats. 1967 provided that no city or county shall directly or indirectly impose a tax on transfers of real property not in conformity with Part 6.7, but that for purposes of this prohibition, it does not apply to charter cities or San Francisco (a city and county). As of 2010, there were 120 charter cities. Between 25 and 30 of those cities impose a higher rate – the lowest at about $2.00 per $1,000 and the highest at $15.00 per $1,000.

DTT is an Excise Tax. The courts have held that the documentary transfer tax is an excise tax. It is neither a property tax nor is it a transaction tax or sale tax on the transfer of real property, which is prohibited by Article XIIIA, Section 4 of California Constitution. A transfer tax attaches to the privilege of exercising one of the incidents of property ownership, its conveyance. Such a tax is an excise tax, rather than a property tax, imposed solely on the privilege of disposing of one's property and realizing its actual value. *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137; *Fisher v. Alameda County* (1993) 20 Cal.App.4th 120.

Administration of the DTT. The county recorder generally collects the DTT on behalf of the counties and cities.

BACKGROUND

SB 816 (Stats. 2009, Ch. 622, Ducheny) amended Section 408 to authorize the assessor to provide confidential information to the county recorder for purposes of investigating whether the DTT should be imposed. In addition, SB 816 added Section 11935 to expressly authorize a county board of supervisors to establish an administrative appeal process for the DTT and specify that the value determined for purposes of the DTT is not binding on the value determined for property tax purposes.

COMMENTS

1. **Purpose.** To obtain access to data or information it needs to ensure the proper imposition of the documentary transfer tax. The author states, "AB 563 would allow for information sharing between the County Assessors' Office and cities to identify change of ownership legal entity transfers and other real property transfers that may not be currently captured. Enactment of the proposed legislation is estimated to result in improved and increased collection of the Documentary Transfer Tax at a time of fiscal crisis for local governments."

   According to the sponsor, information sharing would help result in improved and increased collection of an existing revenue source at a time of fiscal stress.

2. **Key Amendments.** The **August 29, 2011** amendments moved the substance of this bill's provisions into a separate section of code. Since SB 948 (Senate Governance and Finance Committee) also proposes amendments to Section 408 (it provides tax collectors with access to assessor records) moving these provisions eliminated the need for double jointing amendments to prevent chaptering out issues. **August 22, 2011 amendments** (1) required the city to reimburse the assessor for any costs incurred in disclosing the information allowed under this measure and (2) consolidated into one location other agencies also required to provide cost reimbursement. The **May 11, 2011 amendments** (1) limited city employee access to designated employees of a city's finance office, (2) required a written request for access to the information, (3) prohibited the assessor from disclosing social security numbers in documents provided, (4) required the city employee to certify, under penalty of perjury, that access is needed to assist with the enforcement of the DTT, and (5) expressly provided that confidential information obtained retains its confidentially and is not a public record or open to public inspection.

3. **The county recorder generally collects the DTT on behalf of counties and cities.** In the city of Los Angeles, a charter city, the agreement for the collection of taxes between the city and county provides that if the county is unable or does not collect the DTT when the instrument or writing is presented for recordation, the city is responsible for collecting the DTT. Also, a person may claim an exemption from the DTT which may require further investigation by the city to verify. Furthermore, a city may conduct periodic audits of city revenues related to documentary transfer taxes. Such an audit could require access to assessor records to determine the proper imposition of the tax.

4. **Maintaining Confidentially.** This bill expressly requires that confidentiality be maintained by the city. This is consistent with existing practices. Although not

expressly provided in law, BOE staff has consistently opined that confidential records held by the county assessor disclosed to a person permitted access under Section 408 do not lose their status as confidential information. Thus, the city (or any other person granted access via Section 408) would be bound by the same confidentiality standards required by law as the county in regards to maintaining the confidentiality of records. Any acquired documents that are confidential and privileged remain so as long as the privilege is not waived by the affected taxpayer.

5. **Use of the phrase "unrecorded change in control or ownership of property."** Is the intent of this bill to limit access to assessor records in circumstances involving changes in control and ownership occurring under Section 64 (c) and (d)? The phrase could be interpreted to mean that access is allowed only for purposes of investigating changes in ownership triggered by transfers of ownership interests in legal entities such as stock or partnership interests (as distinct from transfers of real property interests). Also, the phrase could be interpreted to allow access in the case of a long term lease of real property that triggers a "change in ownership" of the property. It is unclear whether this language is intended to limit a city's access to precise and narrow circumstances. If so, this language could hamper an investigation a city might want to pursue in the future.
6. **Unrecorded Limitation.** Presumably, adding the term "unrecorded" means that if a grant deed or a lease is recorded and the DTT was not imposed, then the city would have no express right to access the assessor's records. This seems inconsistent with the stated goal of the bill.
7. **Technical Amendments.** At page 2, lines 11 and 17, should "preparation and" be struck or alternatively replaced with either "imposition and" or "investigation and"? At page 2, line 19 and page 3, line 2 should "subdivision" be replaced with "section"?

Assembly Bill 654 (Hueso) Chapter 278

Mills Act Historical Properties – Inspections

Effective January 1, 2012. Among its provisions, amends Sections 50281 of the Government Code.

BILL SUMMARY

This bill, in part, deletes references to Board of Equalization (BOE) and county assessor inspections of historical property under a Mills Act contract for purposes of monitoring contract compliance.

Sponsor: Assembly Member Hueso

LAW PRIOR TO AMENDMENT

An owner of qualified historical property may enter into a preservation contract with a local government that participates in the Mills Act Program [Article 12 (commencing with Section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code] to restrict the use of the property in exchange for a lower assessed value for property tax purposes.

The Mills Act Program is administered and implemented by participating local governments (cities and counties). Mills Act contracts are between the property owner and the local government authorizing property tax relief. Each local government establishes their own criteria and contract conditions. Typically, the contract requires the property owner to restore the property if necessary, maintain its historic character, and use it in a manner compatible with its historic characteristics. When valuing property under a Mills Act contract, the assessor is required to use the special valuation treatment prescribed in Revenue and Taxation Code Sections 439 through 439.4.

Government Code Section 50281(b)(2) requires contracts entered into between a local government and a property owner to allow for, among other things, the periodic examination of the interior and exterior of the premises by the assessor, the State Department of Parks and Recreation, and the BOE as may be necessary to determine the owner's compliance with the contract. In practice, none of these particular agencies inspect properties for this purpose.

AMENDMENT

Property Inspections. This bill, in part, amends Government Code Section 50281(b)(2) to delete reference to inspections by the assessor, Department of Parks and Recreation (specifically the Office of Historic Preservation), and BOE. Instead, the inspections will be performed by the city, county, or city and county that is a party to the contract.

IN GENERAL

Section 8 of Article XIII of the California Constitution provides that: "[t]o promote the preservation of property of historical significance, the Legislature may define such property and shall provide that when it is enforceably restricted, in a manner specified by the Legislature, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses."

The special valuation treatment for enforceably restricted historical property is outlined in Revenue and Taxation Code Sections 439 through 439.4. These statutes, in

particular Section 439.2, prohibit a valuation of enforceably restricted historical property based on sales data and instead require the property be valued by a prescribed income capitalization method. The method prescribed in Section 439.2 contains specific instructions with regard to the income to be capitalized, the capitalization rate, and the capitalization technique to be used. However, the restricted value must be compared to the property's current market value and factored base year value, with the lowest of these three values enrolled as the property's taxable value. This comparison ensures the property is assessed at the lowest assessed value allowable under the law.

COMMENTS

1. **Purpose.** According to the author, "this bill is needed to ensure that a property tax break is not given without the property owner's compliance." This bill requires inspections of Mills Act properties and clarifies who will inspect the contracted properties for the purpose of determining the owner's compliance with the contract.
2. **Issue.** Enforcement and administration of Mills Act contracts has varied between local agencies. This bill requires the local agency entering into the contract to inspect the properties prior to a new agreement and every five years thereafter, and requires the local agency to take steps to enforce the contracts by either cancelling a contract or bringing an action in court to enforce a contract in the event of a breach of contract conditions.
3. **Eliminates Confusion.** The three agencies expressly authorized to conduct inspections for contract compliance do not participate in the contract negotiations, are not a signatory to the contract, and have no authority over the administration of the Mills Act program. The assessor's role is limited to assessing the property pursuant to the procedures outlined in the Revenue & Taxation Code. Thus, deleting the agencies currently named in the Government Code and instead referencing inspections by the city, county, or city and county, eliminates confusion over responsibilities under the Mills Act Program.

Assembly Bill 703 (Gordon) Chapter 575

Welfare Exemption – Natural Lands

Effective October 8, 2011. Amends Section 214.02 of the Revenue and Taxation Code.

BILL SUMMARY

This bill extends the January 1, 2013 sunset date of the property tax welfare exemption for property in its natural state to January 1, 2023.

Sponsor: Assembly Member Gordon

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 214.02 establishes the property tax exemption for property in its natural state as part of the constitutionally based welfare exemption. These are properties that are used exclusively for the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific or educational interest, or open-space lands used solely for recreation and for the enjoyment of scenic beauty, provided that properties are open to the general public, subject to reasonable restrictions.

The exemption does not apply to property reserved for future development. Additionally, it does not apply to a nonprofit organization that owns more than 30,000 acres in a single county if is not fully independent, as specified, of the owner of adjacent taxable lands.

To qualify, the property must be owned and operated by a scientific or charitable organization with the primary interest of preserving those natural areas and meeting all the requirements of Section 214. The exemption applies up to and including the lien date of January 1, 2012. This effectively provides an exemption from property taxes on qualified lands up to and including the 2012-13 fiscal year. Section 214.02 is scheduled to sunset on January 1, 2013.

AMENDMENT

This bill amends Section 214.02 to extend the exemption up to and including the lien date of 2022 and repeals its provisions on January 1, 2023.

IN GENERAL

Welfare Exemption. Under Section 4(b) of Article XIII of the California Constitution, the Legislature has the authority to exempt property (1) used exclusively for religious, hospital, or charitable purposes, and (2) owned or held in trust by nonprofit organizations operating for those purposes. This exemption from property taxation, popularly known as the *welfare exemptio*n, was first adopted by voters as a constitutional amendment on November 7, 1944. With this amendment, California became the last of 48 states in the country to provide such an exemption from property taxes.

When the Legislature enacted Revenue and Taxation Code Section 214 to implement the Constitutional provision in 1945, a fourth purpose, *scientific*, was added to the three mentioned in the Constitution. Section 214 parallels and expands upon the Constitutional provision by exempting property used exclusively for the stated purposes (religious, hospital, scientific, or charitable), owned by qualifying nonprofit organizations

if certain requirements are met. An organization's *primary* purpose must be either religious, hospital, scientific, or charitable. Whether its operations are for one of these purposes is determined by its activities. A qualifying organization's property may be exempted fully or partially from property taxes, depending on how much of the property is used for qualifying purposes and activities. Section 214 is the primary welfare exemption statute in a statutory scheme that consists of more than 20 additional provisions. Over the years, the scope of the welfare exemption has been expanded by both legislation and numerous judicial decisions.

The Constitution and statutes impose a number of requirements that must be met before property is eligible for exemption. In general:

- The property must be irrevocably dedicated to religious, hospital, scientific, or charitable purposes.
- The owner must not be organized or operated for profit and must be qualified as an exempt organization, under a specific federal or state statute, by the Internal Revenue Service or the Franchise Tax Board.
- No part of the net earnings of the owner may inure to the benefit of any private shareholder or individual.
- The property must be used for the actual operation of the exempt activity.

BACKGROUND

Natural State Properties. Section 214.02 was added during the 1971 special session of the Legislature. This provision had been included in bills heard during the 1971 regular session (AB 1264, Biddle and AB 185, Bagley), and was the product of a 1970 Assembly Revenue and Taxation Committee interim hearing on the subject of natural lands preservation. In 1970, the Committee held hearings and conducted studies to investigate alternative tax policies that would have a positive environmental influence on the future of the state. The staff report to the committee concluded that, due to an over reliance on property tax revenues, local governments were reluctant to preserve open space areas, recreational areas, and ecologically valuable areas. Hence, land was becoming a vanishing resource subject to irreparable damage. (Source: The Fiscal Implications of Environmental Control; an Appendix to Final Report of the Assembly Committee on Revenue and Taxation, Interim Activities (1970) pp. 90-92.)

Sunset Date History. The intent of the original legislation enacting Section 214.01 was to assist nonprofit organizations that purchased open-space and similar lands, held the lands temporarily, and then sold or donated the lands to public agencies for permanent use as park facilities. A sunset date was included in the original legislation as a result of a Senate Revenue and Taxation Committee hearing, to ensure that the charitable organizations sold or donated the lands rather than hold them indefinitely. Since that time, it appears that in some cases charitable organizations may be the permanent owners of lands due, in part, to the limited ability of public agencies to acquire additional lands. The sunset date has been continuously extended as noted in the following table.

Bill	Author	Years Extended	Sunset Year
AB 971 (Ch. 67, Stats. 1982)	Bergeson	1	1982
AB 2308 (Ch. 1485, Stats. 1982)	Bates	5	1987

Bill	Author	Years Extended	Sunset Year
AB 2890 (Ch. 1457, Stats. 1986)	Hannigan	5	1992
AB 2442 (Ch. 786, Stats. 1992)	Baker	10	2002
SB 198 (Ch. 533, Stats 2001)	Chesbro	10	2012

When the extension of the welfare exemption was discussed in 1982, concern was expressed that the exemption primarily benefited the former owner of 42,000 acres of land on Santa Catalina Island, who at that time was the sole owner of large landholdings in the middle of the exempt property. It was argued that this situation gave the owner the benefits of a large estate without having to pay tax on the entire property. Thus, limited provisions were added to prevent the operation of the exempt property from inuring to the benefit of the adjacent land owner. Today, many organizations throughout the state benefit from the exemption, and it is no longer viewed as primarily benefiting one particular property.

The constitutionality of Section 214.02 was questioned and upheld in *Santa Catalina Island Conservancy* v. *County of Los Angeles* 126 Cal.App.3d 221(1981) on the basis that preservation of natural environments and open space recreational opportunities for the benefit of the general public is a "charitable" purpose.

COMMENTS

1. **Purpose.** To provide the same long-term property tax assurances to important open-space lands that are currently afforded to schools, hospitals, and churches operated by nonprofit organizations.
2. **Amendments.** The May 24, 2011 amendment extended the sunset date for ten years, to January 1, 2023. As introduced, the bill would have eliminated the sunset date, thereby making the exemption permanent.
3. **Issue.** Without this bill, these properties will become subject to property tax in 2012. This bill would give nonprofit organizations certainty in their financial planning related to property tax matters. Supporters note that failure to extend the exemption would be disruptive, likely resulting in some organizational insolvency.
4. **The exemption has been in place nearly 40 years.** The exemption has been continuously available since 1972 as its sunset provisions have been extended five times.
5. **What property is currently exempt under this section?** Properties exempt pursuant to this section include qualified properties owned by nonprofit organizations such as: The Nature Conservancy, The Trust for Public Land, Anza-Borrego Foundation, Big Sur Land Trust, Peninsula Open Space Trust, Napa County Land Trust, Save the Redwoods League, Santa Catalina Island Conservancy, and Mountains Restoration Trust. To provide legislative direction to Los Angeles County and to ensure that possessory interest taxes will not be levied on this particular project. The bill includes detailed Legislative findings and declarations as to its purpose.

Assembly Bill 711 (Lara) Chapter 220

Burden of Proof – Owner Occupied Single Family Dwelling

Effective January 1, 2012. Amends Section 167 of the Revenue and Taxation Code.

BILL SUMMARY

This bill shifts the burden of proof to a taxpayer in an assessment appeal hearing of an owner-occupied single-family dwelling if it is a vacation or secondary home.

Sponsor: California Assessors' Association

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 167 provides for a rebuttable presumption regarding the burden of proof in favor of a taxpayer in an assessment appeal hearing involving the imposition of a tax on, or the assessment of, an owner-occupied single-family dwelling.

Section 218 provides that the homeowners' exemption does not extend to property that is a vacation or secondary home of the owner. It also does not extend to a property that is vacant, rented, or under construction on lien date.

AMENDMENT

This bill adds subdivision (c) to Section 167 to provide that an owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and that qualifies for a homeowners' property tax exemption.

IN GENERAL

Presumptions. Property tax assessments, and some factual circumstances on which property tax assessments are based, carry certain legal presumptions determining the manner in which evidence is presented as well as the quantum of evidence that a party is required to present. Under the Evidence Code, a *presumption* is defined as:

> … an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence.*§600*
>
> A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof.*§601*

Both the presumption affecting the burden of producing evidence and the presumption affecting the burden of proof may be used in an appeals hearing. Evidence Code Section 606 provides that the effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proving the nonexistence of the presumed fact. Depending upon the matter in issue, a presumption may operate against either the assessor or the applicant.

An appeals board must apply an applicable presumption as the starting point for determination as to which party has the burden of the production of evidence. The appeals board then proceeds with examination of the evidence to determine whether the evidence is sufficient to rebut the presumption and to establish a different value for the protested property. If the presumption operates against the applicant and the

applicant fails to present evidence sufficient to rebut the correctness of the assessed value, at the request of the assessor, the appeals board will dismiss the case without requiring the assessor to provide evidence substantiating the assessed value. If the appeals board determines the applicant has presented evidence sufficient to make a prima facie case, the burden shifts to the assessor to present evidence to support his or her opinion of value. *Fujitisu Microelectronics, Inc.* v *Assessment Appeals Board* (1997) 55 Cal.App.4th 1120. However, if the presumption operates against the assessor and the assessor fails to present evidence sufficient to rebut the presumption, the appeals board should rule in favor of the applicant providing that there is substantial evidence in the record to support the applicant's value.

Presumption of Correctness. The property tax system is based on the assumption that county assessors properly perform their assessment duties in accordance with law and other applicable standards. Evidence Code Section 664 provides that "it is presumed that official duty has been regularly performed." With regard to assessments courts have held that "[i]t will be presumed, in absence of contrary evidence, that assessor regularly and correctly assessed property for taxation." *E.E. McCalla* Co. v. *Sleeper (*1930) 105 Cal.App. 562

The presumption of correctness operates against the applicant and the applicant may overcome it by presenting substantial, competent evidence different than the assessor's sufficient to make material the inquiry as to whether the assessor's methods were proper. *Campbell Chain Co.* v. *County of Alameda* (1970) 12 Cal. App.3d 248

Property Rule 321 relates to the burden of proof during an appeals hearing and provides, in part:

> (a) Subject to exceptions set by law [of which an owner-occupied single-family dwelling is one], it is presumed that the assessor has properly performed his or her duties. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant present independent evidence relevant to the full value of the property or other issue presented by the application.

Where the assessor holds the presumption of correctness, the appeals board then proceeds with examination of the evidence to determine whether the applicant's evidence is sufficient to establish an opinion of value and that the evidence demonstrates that the assessor did not establish a correct assessment.

Exceptions. For assessment appeals hearings, there are five instances when the burden of proof shifts to the county assessor; that is, the county assessor must affirmatively establish by a preponderance of evidence the correctness of his or her opinion of value or other assessment action. Those instances are appeals involving:

- The value of owner-occupied single-family dwellings;
- Penalty assessments;
- Escape assessments;
- Nonenrollment of a purchase price; and
- When the county assessor intends to request a higher assessed value than is on the roll.

BACKGROUND

Revenue and Taxation Code Section 167 was added by SB 223 (Statutes 1976, Ch. 69). This bill was introduced by Senator Wedworth. A letter from the BOE to then Governor Brown, dated March 18, 1976, sheds light on issue giving rise to the original legislation.

> "It is our understanding that the author's interest in the bill stems from an assessment appeals board hearing in Los Angeles County in which he appeared for the taxpayer. After hearing his testimony, the assessor stated he would stand on the roll as submitted and the board ruled for the assessor. Apparently it was the opinion of the assessor and the board that the author had introduced no evidence to refute the assessor's value. As a result of that experience, we understand, the author felt it was improper for the assessor to introduce no evidence to support his value and sought to require introduction of that evidence."

COMMENTS

1. **Purpose.** To correct and clarify that the protection in Section 167 is intended for homes that are the principal place of residence of the owner.
2. **Issue.** According to the sponsor, the burden of proof in favor of the taxpayer in an assessment appeal hearing should be limited to principal places of residence and should not apply to vacation homes. The sponsors state that this bill is consistent with the original intent of Section 167
3. **Recent Case.** A recent Third District Court of Appeals *Farr* v. *County of Nevada* (2010) held that the appeals board failed to apply the statutory presumption affecting the burden of proof in favor of the homeowner in a case involving a vacation home. The case was remanded to the appeals board for a new hearing. There appeared to be some confusion at the appeals hearing concerning the order of presentation and the burden of proof regarding an owner-occupied single-family home that was not the owner's principal place of residence. At the initial hearing, the property owner gave his presentation first to the appeals board.
4. **Presumption affecting burden of proof advantage given to homeowners.** Appeals hearings are conducted informally so that both the taxpayer and the assessor can proceed without an attorney. Owners of single-family residences generally represent themselves at appeals hearings without assistance from an attorney or tax representative. Usually, these applicants are novices to the assessment appeals process and have limited knowledge of property tax appraisal and appeals hearing procedures. With owner-occupied single-family dwellings, the owner's opinion of value in an assessment appeal is presumed correct and the burden is on the assessor to overcome the presumption. The burden of proof requires proof by a preponderance of the evidence. Procedurally, the assessor would be required to make his presentation with supporting evidence to the appeals board first.
5. **This bill removes the advantage for vacation or secondary homes.** The new definition would serve to place the burden of proof in an assessment appeal hearing involving the assessment of a vacation or secondary home on the property owner. In practical application this means that at an appeals hearing the property owner would proceed first and would have the burden of the production of evidence

relevant to the full value of the property or other issue presented by the appeal application.

6. **Other instances shifting burden of proof.** There are four other instances whereby the burden of proof shifts to the assessor; that is, the assessor must affirmatively establish by a preponderance of evidence the correctness of his or her opinion of value or other assessment action. Those instances are penalty assessments, escape assessments, nonenrollment of purchase prices, and when the assessor intends to request a higher assessed value than is on the roll.
7. **Standing on the presumption of correctness.** Except as noted previously, the assessor holds the presumption of correctness. The circumstances that provoked the enactment of Section 167 was a reaction to the assessor standing on the presumption of correctness and making no explanation of the appraisal in an appeal hearing involving a single family residence where the taxpayer had failed to meet his burden of proof.

Assembly Billx1 15 (Hill) Chapter 3

Solar New Construction Exclusion – Sale-Leaseback & Partnership Flip Transactions

Effective June 28, 2011. Uncodified legislative findings and declarations and amends Section 73 of the Revenue and Taxation Code.

BILL SUMMARY

This bill expressly provides, via uncodified legislative findings and declarations, that a purchaser of a newly constructed active solar energy system that was sold in a sale-leaseback, partnership flip structure, or other transaction, is eligible to receive the property tax new construction exclusion for the system.

Sponsor: Sun Edison

LAW PRIOR TO AMENDMENT

New Construction Exclusion – Active Solar Energy Systems. The California Constitution, Article XIII A, Section 2(a) requires that when real property is "newly constructed," the new construction must be assessed for property tax purposes. An additional assessment for the increase in value from the "new construction" is added to the existing assessed value of the property. However, Article XIII A, Section 2(c)(1), grants the Legislature the authority to exclude from the definition of assessable new construction the construction or addition of any active solar energy system. Thus, with the new construction exclusion, a system can be constructed or installed without any increase in property tax liability. Section 73 of the Revenue and Taxation Code is the implementing statute for this new construction exclusion and its provisions are scheduled to be repealed on January 1, 2017.

Change in Ownership Triggers Reassessment. Relevant to this bill, Article XIII A, Section 2(a) also requires the assessed value for property tax purposes to be reestablished whenever a change in ownership has occurred. Generally, after a change in ownership of real property (land and improvements), the entire property, including any portion of the property (or additional value) previously excluded from property tax under a new construction exclusion, is subject to reassessment to its current market value. However, with respect to the issue giving rise to this bill, the entire property is not undergoing a change in ownership. Rather, the active solar energy system itself is being sold. Under existing law, a sale of the system doesn't require the underlying real property to be reassessed.

Systems Installed but not owned by Property Owner - Systems Sold Apart from the Real Property. Existing law is silent with respect to the application of the new construction exclusion when a solar energy system is newly installed or constructed and the system itself, but not the property upon which it is constructed, is sold or transferred.

A common practice by builders and developers of solar systems allows property owners to have solar systems installed at their location with no upfront or ongoing maintenance cost. To do this, the system must be sold to a third party and the property owner enters into a power purchase agreement to buy the power generated from the system located on their property. Thus, the real estate owner neither owns nor operates the system that is newly constructed upon his or her property.

For example, these systems are built and installed by solar energy system developers and then sold or transferred to purchasers that are eligible for federal tax benefits in a sale-leaseback arrangement. The developer leases the system back from the purchaser (a tax investor) and maintains and operates it on behalf of the real estate owner who buys the power generated from the system. An alternative technique of installing systems at no cost to the property owner uses a "partnership flip" structure.

Solar Energy Systems Incorporated in Initial Construction – Exclusion Extended to Initial Purchaser. As noted in Section 1(a) of this bill, Section 73 was amended in 2008 (AB 1451, Stats. 2008, Ch. 538, Leno) to extend the new construction exclusion after a change in ownership if a new building is initially constructed with a solar energy system incorporated and subsequently sold by the developer. Specifically, 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., a building offered for sale, such as a new home in a subdivision or a new warehouse), the exclusion for the system applies to the building's first buyer if (1) the owner-builder did not request and receive the exclusion for the same system and (2) 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.

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 is 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 ends the exclusion of the value of the active solar energy system from property tax.

AMENDMENTS

Financing Mechanisms Requiring Sale of Newly Constructed System. With respect to the new construction exclusion for active solar energy systems this bill makes Legislative findings and declarations that in cases where a newly constructed active solar energy system is sold in sale-leaseback arrangements, partnership flip structures, or other transactions, the property tax exclusion for solar energy systems of Section 73 applies provided (1) the system is newly constructed or added and (2) no other taxpayer has received the exclusion for that same system.

As noted above, the mechanism used to finance the initial construction of the system at no cost to the property owner requires the system to be sold to a purchaser that can take advantage of federal tax benefits.

Installation Methods. This bill also makes findings and declarations that the following systems qualify under Section 73: (1) systems constructed as freestanding or parking lot canopies and (2) systems constructed or installed on existing buildings. Further, the aforementioned types of systems sold in sale-leaseback transactions qualify.

Declaratory of Existing Law. Section 1(d) of the bill provides that the amendments made to Section 73 do not constitute a change in, but are declaratory of, existing law. Those amendments to Section 73 add subdivisions (f) and (i)(2). Subdivision (f) provides that the exclusion from new construction provided by this section shall remain in effect only until there is a *subsequent* change in ownership. That is, a change in ownership subsequent to a transaction such as that described in the legislative findings and declarations. Subdivision (i)(2) provides that a system that qualifies for an

exclusion prior to the repeal of Section 73 continues to remain excluded after the provision is repealed until there is a subsequent change in ownership.

The amendments to Section 73 also add the phrase "upon completion of the construction of a system as part of a new property or the addition of a system to an existing property" to the definition of "active solar energy system" in subdivision (b)(1). As this is a definitional provision of what types of systems qualify and as this amendment is declaratory of existing law, this does not affect the application of the new construction exclusion to construction in progress that will, when complete, meet the definition.

Effective Immediately. Section 4 of the bill provides that in order to timely clarify the application and requirements of the real property exclusion for active solar energy systems, the bill is to take effect immediately.

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" or "full cash 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. Proposition 7, approved by California voters in November 1980, created an exclusion for active solar energy systems.

Overview of Active 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.

COMMENTS

1. **Purpose.** According to the author, "[t]his bill is necessary because there is uncertainty in Revenue and Taxation Code 73 as it relates to the current exclusion from property tax reassessment for purchases of new "active solar energy systems" that are sold in first owner sale-leaseback arrangements. Even though sale-leaseback arrangements on solar energy systems have been utilizing the property tax exclusion for years under existing law, some have argued that there might be ambiguity in the law and it should be clarified. ABx1 15 provides this clarity and reaffirms existing law so solar projects can continue to receive the tax assessment exclusion."

2. **Sale-Leaseback and Similar Financing Transactions.** The ambiguity referenced by the author relates to the issue that, typically, a new construction exclusion remains in effect until a 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, is reassessed at its current market value pursuant to the change in ownership provisions of Proposition 13. However, in situations where an active solar energy system is sold in a sale-leaseback

arrangement or partnership flip structure arrangement, the entire property is *not* undergoing a change in ownership. The uncodified legislative findings and declarations of this bill would ensure that assessors recognize the current exclusion for new active solar energy systems that are sold in first-owner sale-leaseback, partnership flip, or other transactions.

3. **In the case where a building is built for immediate sale, existing law expressly provides that the exclusion would continue to apply to the initial purchaser of the building.** Without the provisions added by AB 1451 (Stats. 2007, Ch. 538, Leno), the new construction exclusion would have been 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. Allowing the exclusion to be extended when it was not claimed by the original owner-builder falls within the spirit of the existing constitutional authorization to exclude from property tax the value added by active solar energy systems.

4. **Subsequent Changes in Ownerships.** Newly added subdivision (f) of Section 73 provides that the exclusion from new construction provided by this section is to remain in effect only until there is a *subsequent* change in ownership. To read this in harmony with the provisions in the legislative findings and declarations concerning sale-leaseback and partnership flip transactions, this means a change in ownership *subsequent* to a transaction such as that described in the legislative findings and declarations.

5. **Installation Methods.** The Legislative findings and declarations related to installation methods provide that the exclusion applies to (1) systems constructed as freestanding or parking lot canopies and (2) systems constructed or installed on existing buildings. This is consistent with existing administrative practices.

6. **Construction in Progress.** The amendment to Section 73(b)(1) adds the phrase "upon completion of the construction of a system as part of a new property or the addition of a system to an existing property" to the definition of "active solar energy system." As this is a definitional provision of what *types* of systems qualify, and as this bill provides that the amendments to Section 73 are declaratory of existing law, this bill does not affect the allowance of the new construction exclusion to construction in progress that will, when complete, meet the definition.

7. **Repeal of Section 73.** Newly added subdivision (i)(2) of Section 73 provides that a system that qualifies for an exclusion prior to the repeal of Section 73 continues to remain excluded after the provision is repealed until there is a subsequent change in ownership. This is consistent with the treatment of any new construction exclusion that includes a sunset date. For those unfamiliar with the intricacies of California property tax law, there can be a general perception that a solar energy system currently excluded from assessment will become subject to property tax once the exclusion sunsets. This perception must be overcome by those working towards encouraging investments in solar energy in California over the long term. To be clear, the repeal of Section 73 does not make a system that is benefiting from the exclusion immediately taxable. Thus, should Section 73 be repealed on January 1, 2017, a solar system that previously received the new construction exclusion will not become assessable, absent any other change in circumstances.

8. **Section 73 is not a real property tax "exemption" for solar energy systems, it is a new construction "exclusion."** 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. The distinction between an exclusion and an exemption is important for several reasons: (1) the exclusion terminates if there is a transfer of the property resulting in change in ownership of the property (a reappraisal event), (2) the exclusion does not apply to any property that is under the assessment jurisdiction of the BOE – any such facility would be subject to state assessment, and (3) in the case of any locally assessed large scale solar project only the "improvements" are eligible for the exclusion, the land remains subject to property tax. (Note: if the land is government owned, the land could become subject to property tax as a possessory interest. Generally, a taxable possessory interest exists when a taxpayer possesses an interest in government real property that is durable, independent, and exclusive of the rights held by others in the real property and the interest provides a private benefit to the possessor).

Senate Bill 507 (DeSaulnier) Chapter 708

Change in Ownership Reporting

Effective January 1. 2012. Amends Sections 480, 480.1, 480.2, 482, and 483 of the Revenue and Taxation Code.

BILL SUMMARY

This bill relates to property tax change in ownership reporting requirements and related penalties for (1) real property transfers that must be reported to the local county assessor and (2) legal entity ownership interest transfers that must be reported to the Board of Equalization (BOE). Specifically, this bill:

Real Property Transfers. Related to an assessor's written request to a property owner to file a change in ownership statement[3]:

- Increases the penalty for failure to file the statement on property with a value of $2.5 million or more as follows:
  - Increases from $2,500 to $20,000 the maximum penalty on property not eligible for the homeowners' exemption. *§480, §482(a)*
  - Increases from $2,500 to $5,000 the maximum penalty on property eligible for the homeowners' exemption. *§480, §482(a)*
- Increases from 45 to 90 the number of days to file the statement. *§480, §482(a)*
- Specifies the statement identify the real property or manufactured home for which the request is being made. *§482(f)*
- Specifies the address to use when mailing the request. *§480(c), §482(a)(2), §482(f)*
- Specifies the address to use when mailing a penalty notice for failure to file. *§482(f)*
- Requires penalty notices to identify the parcel or parcels for which the penalty is assessed. *§482(f)*
- Specifies that the date of the mailing, not the date of the written request, begins the 90 day period within which to file the statement. *§482(a)*
- Specifies that the postmark date will serve as the date the property owner files the statement. *§480(g)(2)*

Legal Entity Ownership Interest Transfers. Related to legal entity change in control and change in ownership statements required to be filed with the BOE[4]:

- Increases from 45 to 90 the number of days a legal entity has to report a change in ownership or change in control to the BOE. *§480.1, §480.2, §482(b)*
- Increases from 45 to 90 the number of days a legal entity has to file a statement with the BOE before a penalty will be levied for failure to file a statement after a BOE written request. *§480.1, §480.2, §482(b)*

[3] This document will be referred to as a COS throughout this analysis.
[4] This document, which is different from a COS, will be referred to as a LEOP COS throughout this analysis.

- Clarifies that the penalty for failure to file the statement with the BOE is to be levied by the assessor. *§482(b)(1)*

Penalty Abatement Appeals. Expressly provides that in those counties with assessment appeals boards, the appeals board will hear penalty abatement appeals for late filed or failure to file penalty related issues rather than the county board of supervisors. *§483*

Penalty Abatement by Assessor. Related only to legal entity change in control and change in ownership statements required to be filed with the BOE, requires the assessor to abate the penalty if the assessor determines that a written request by the BOE to file a statement was based on erroneous information, as specified. *§483(c)(2)*

Sponsor: California Assessors' Association

PART 1
CHANGE IN OWNERSHIP – REAL PROPERTY TRANSFERS
Revenue and Taxation Code Section 480

LAW PRIOR TO AMENDMENT

Change in Ownership. Under existing property tax law, real property is reassessed to its current fair market value when there is a "change in ownership." (Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60-69.5.) There are numerous laws in place intended to assist county assessors with obtaining information necessary to perform this function. Revenue and Taxation Code Section 255.7 requires that whenever a change in ownership is recorded, the county recorder must provide the assessor with a copy of the transfer ownership document as soon as possible and Article 2.5 (Revenue and Taxation Code Sections 480-487) "Change in Ownership Reporting" requires taxpayers to provide information to the assessor.

Change in Ownership Statement. Revenue and Taxation Code Section 480 requires that, whenever there is a change in ownership of real property, the buyer (the "transferee") must file a "Change in Ownership Statement" (COS). However, there is no penalty for failing to file the statement unless the assessor prompts the property owner to file the statement by making a written request. If requested, then the property owner has 45 days to file the COS or otherwise incur penalties as specified.

The majority of property owners are not requested to file a COS because a "Preliminary Change in Ownership Report" (PCOR)[5] is filed concurrently with ownership transfer documents with the county recorder to avoid an additional recording fee of $20. These two forms (PCOR and COS) mirror each other and the information requested is identical. The COS and/or PCOR provide the assessor with information necessary to value the property, such as details about the purchase price and the terms of the sale. It also assists the assessor in determining whether the transfer of property might be eligible for one of the many change in ownership exclusions that would avoid the need to reassess the property. Both the COS and the PCOR are confidential documents pursuant to Section 481.

[5] Section 480.3 requires the transferee of real property to complete and file a PCOR when any document effecting a change in ownership, such as a grant deed, is submitted to the county recorder for recordation. If a PCOR is not concurrently filed, the document may still be recorded, but an additional recording fee of $20 may be charged. To avoid the fee, many property taxpayers, particular homeowners, will file a PCOR at the time a deed is recorded.

Typically, when a property owner files a PCOR, the assessor would have no need to make a written request for a COS since the information needed from the property owner has already been obtained from the PCOR. However, Section 480.3(d) provides that "[t]he authority to obtain information under this provision is in addition to, and not in lieu of, any existing authority the assessor has under Article 2.5 "Change in Ownership Reporting."

Penalty Only After Written Request. Generally, the penalty for failing to timely file a COS after a written request is 10 percent of the taxes applicable to the new base year value reflecting the change in ownership, but not to exceed $2,500 provided the failure to file the statement is not willful. Thus, at the basic 1 percent tax rate, the maximum penalty threshold of $2,500 applies to any property with a new base year value in excess of $2.5 million (1 percent x $2.5 million = $25,000 x 10 percent penalty = $2,500). If the failure to file the statement is deemed "willful" then no penalty cap applies and the penalty is 10% of the property's new base year value. In the event that a written request is made, but in fact no change in ownership occurred, the penalty for failure to respond to the assessor is $100.

Penalty Abatement. Section 483(a) provides that the county board of supervisors may abate the penalty if the assessee (1) establishes to the satisfaction of the county board of supervisors that the failure to file the change in ownership statement within the time required by Section 482(a) was due to reasonable cause and not due to willful neglect, and (2) has filed the statement with the assessor, provided the assessee has filed with the county board of supervisors a written application for abatement of the penalty no later than 60 days after the date on which the assessee was notified of the penalty.

County Optional - Automatic Penalty Abatement. Alternatively, in those counties where the county board of supervisors adopts a special resolution, Section 483(b) provides that the penalty shall be abated if the assessee files the change in ownership statement with the assessor no later than 60 days after the date the assessee is notified of the penalty.

Addresses. Currently the law is silent as to the address a change in ownership statement (COS) is to be mailed. With respect to any penalty levied because of failure to respond to a written request, Section 482(f) provides that the penalty notice is to be mailed to the transferee at his or her address as indicated in any recorded instrument or at any address reasonably known to the assessor.

AMENDMENTS

Change in Ownership Statement. This bill amends Section 480 to increase the maximum penalty cap from $2,500 to $20,000 for those that fail to file a COS with the assessor after a written request is made under Section 480, except for properties eligible for the homeowners' exemption. The maximum penalty cap for properties eligible for the homeowners' exemption increases from $2,500 to $5,000. In practical application, this increases the penalty for failure to file a COS on any property with a new base year value in excess of $2.5 million. In addition, this bill increases the number of days to respond after a written request from 45 to 90 days and would specify that, where applicable, the postmark date will be used to determine whether the statement was timely filed.

Addresses – Request to File COS and Mail any Resulting Penalty Notice. This bill adds paragraph (2) to Section 482(a) and amends subdivision (f) of Section 482 to

specify the address to which a request to file a COS must be sent as noted below. It also amends Section 482(f) so the provision that the penalty notice for failure to file a change in ownership statement with the assessor may be mailed to *any* address reasonably known to the assessor would only be available as a last resort and provided the notice is to be mailed as follows:

- To the transferee at the address contained in any recorded instrument or a document evidencing a transfer of an interest in real property or manufactured home, or the address specified for mailing tax information on the filed preliminary change in ownership report.
- If the transferee has subsequently notified the assessor of a different address for mailing tax information, the assessor shall mail the request to this address.
- If there is no address specified for mailing tax information on either the recorded instrument or document evidencing a transfer of an interest in real property or manufactured home or the filed preliminary change in ownership report, and the transferee has not provided a subsequent address for mailing tax information, *then* the assessor shall mail the notice of penalty or the request to file a statement to the transferee at any address reasonably known to the assessor.

This bill also amends Section 482(f) to require both the request to file a COS and any resulting penalty notice to identify the parcel or parcels to which it pertains.

PART 2
CHANGE IN OWNERSHIP – TRANSFERS OF OWNERSHIP INTERESTS IN LEGAL ENTITIES
Revenue and Taxation Code Section 64

LAW PRIOR TO AMENDMENTS

Revenue and Taxation Code Section 64 sets forth the change in ownership provisions related to the purchase or transfer of ownership interests in legal entities that own real property (e.g., stock in a corporation, interests in a limited liability company, or interests in a partnership). Section 64(a) provides the general rule that transfers of interests in legal entities do not constitute changes in ownership (and, therefore, no reassessments) of the real property owned by those legal entities. However, there are two exceptions to that general rule. The

Revenue and Taxation Code Section 64 sets forth the change in ownership provisions related to the purchase or transfer of ownership interests in legal entities that own real property (e.g., stock in a corporation, interests in a limited liability company, or interests in a partnership). Section 64(a) provides the general rule that transfers of interests in legal entities do not constitute changes in ownership (and, therefore, no reassessments) of the real property owned by those legal entities. However, there are two exceptions to that general rule. The first exception is when there is a "change in control" of the legal entity. The second exception is when persons that are deemed "original coowners" of the legal entity cumulatively transfer more than 50 percent of their ownership interests in that legal entity. Specifically:

- **Change in Control of Legal Entity.** Section 64(c) provides that when any person or entity obtains control through direct or indirect ownership or control of **more than 50 percent** of the voting stock of a corporation, or obtains more than a 50 percent ownership interest in any other type of legal entity, a reassessment of will occur of all

real property owned by the acquired legal entity (and any entity under its control) as of the date of the change in control.

- **Cumulative Transfers by "Original Coowners**." Section 64(d) provides that when voting stock or other ownership interests representing **cumulatively more than 50 percent** of the total interests in a legal entity are transferred by any of the "original coowners"[6] in one or more transactions, the real property which was previously excluded from change in ownership under Section 62(a)(2), shall be reassessed.

LEGAL ENTITY CHANGE IN OWNERSHIP DISCOVERY
Revenue and Taxation Code Section 480.1 and 480.2

LEOP. Assessors discover most changes in ownership of real property via grant deeds or other documents recorded with the county recorder. However, real property owned by a legal entity may undergo a "change in ownership" as discussed above, but no grant deed or other document will be recorded that could alert the assessor that the property should be reassessed. Discovery of these types of changes in ownership, unlike transfers of real property, require the BOEs direct participation and self reporting by the legal entities.

The BOE participates in this discovery task through a program called the Legal Entity Ownership Program (LEOP). In the case of a Section 64 (c) change in control, a person or legal entity that acquires control of a legal entity that owns real property is required to report that event to the BOE. In the case of a Section 64(d) change in ownership, the legal entity itself is required to report to the event to the BOE. The document used to report the change in control or ownership of a legal entity is substantively different than the one used for real property transfers reported to the assessor, although both are referred to as "change in ownership statements". To differentiate between the two statements, the statement filed with the BOE will be referred to as the LEOP COS while a statement filed with the assessor will be referred to as a COS. To illustrate the distinction:

- **COS filed with Assessor.** If a legal entity purchases an office building, the legal entity would file a COS directly with the county assessor where the property is located.
- **LEOP COS filed with BOE.** If that same legal entity instead purchases the business that owns that office building (buys a majority ownership interest in the company), the legal entity would file a LEOP COS with the BOE. The BOE would in turn alert the affected local county assessor of the need to reassess that property.

[6] **Proportional Ownership Interests Exclusion Creates "Original Coowner" Designation.** Under Section 62(a)(2), a transfer of real property to a legal entity does not result in a reassessment if the transfer is merely a change in the method of holding title and the proportional ownership interests in the real property are *exactly* the same before and after the transfer. However, after a transfer of real property qualifies for this exclusion from reassessment, the persons holding ownership interests in the legal entity immediately after the transfer are considered "**original coowners**" for purposes of tracking subsequent transfers by original coowners of those interests. When such transfers cumulatively exceed 50 percent, the real property previously excluded from reassessment under Section 62(a)(2), is deemed to undergo a change in ownership, and is, therefore, subject to reassessment under Section 64(d).

Self Reporting Requirement

45 Days. Existing law requires a LEOP COS to be filed with the BOE within 45 days of the date of the event that triggers a change in control or change in ownership of a legal entity under Section 64(c) or (d). In the case of a change in control under Section 64(c), the person or legal entity that *acquired* control of the legal entity is responsible for filing the LEOP COS.

Penalty. If a person or legal entity does not file the required LEOP COS within 45 days, a penalty is applicable. The penalty amount is 10 percent of the taxes applicable to the new base year value reflecting the change in control or change in ownership of the real property owned by the legal entity.

Unreported Discovery Efforts

To help discover unreported changes in control and changes in ownership of legal entities, the law requires that the BOE participate in the discovery of changes in control and ownership of legal entities under Section 64(c) and (d). To this end, the primary method is an annual canvassing of legal entities via the income tax return as required by Section 64(e). The questions on the California income tax form of corporations are as follows:

> **J 1.** For this taxable year, was there a change in control or majority ownership for this corporation or any of its subsidiaries that owned or (under certain circumstances) leased real property in California? . . . . . ☐ Yes ☐ No
>
> **2.** For this taxable year, did this corporation or any of its subsidiaries acquire control or majority ownership of any other legal entity that owned or (under certain circumstances) leased real property in California? . . . . . ☐ Yes ☐ No
>
> **3.** If this corporation or any of its subsidiaries owned or (under certain circumstances) leased real property in California, has more than 50% of the voting stock of any one of them cumulatively transferred in one or more transactions since March 1, 1975, which was not reported on a previous year's tax return? . . . . . ☐ Yes ☐ No
>
> **(Penalties may apply – see instructions.)**

The Franchise Tax Board (FTB) transmits to the BOE for further investigation the names and mailing addresses of the legal entities that report a change in control and/or a change in ownership on the income tax return. The BOE then makes a formal written request to the legal entity to file a LEOP COS to determine if property it owns in California should be reassessed.

The BOE also makes formal written requests to legal entities to investigate other possible changes in ownership based on information it obtains from monitoring business publications and referrals it received from local assessors or other sources. Additionally, at the local level, businesses are canvassed via the annual business property statement filed with the local assessor.

Written Requests. If a legal entity does not complete and file the requested LEOP COS within 45 days, a penalty is applicable. The penalty for failure to respond to a BOE written request to file a LEOP COS or failure to timely respond applies whether or not a change in control or change in ownership actually occurred. (If it is later determined that a change in control or change in ownership did occur, and was not previously self-reported to the BOE, then a penalty would have been triggered previously --because it was not reported within 45 days of the event.)

AMENDMENTS

Related to the LEOP COS required to be filed with the BOE, this bill:

Self Reporting Requirement. Amends Sections 480.1, 480.2, and 482 to increase from 45 to 90 the number of days a legal entity has to report a change in ownership or change in control to the BOE. *§480.1, §480.2, §482*

Reporting Requirement upon BOE Request. Amends Section 482 to increase from 45 to 90 the number of days a legal entity has to comply with a written request to file a LEOP COS with the BOE timely. It also makes conforming amendments to the required "Important Notice" that must be printed on the LEOP COS in Sections 480.1 and 480.2. *§480.1, §480.2, §482*

Penalty. This bill does not change the penalty amount. It amends Section 482(b)(1) to clarify that the county assessor is to levy the penalty and that the penalty is for failure to file the LEOP COS with the BOE. It clarifies that the penalty also applies when an incomplete LEOP COS is filed and a second request to complete the LEOP COS is not satisfied. It also adds paragraph (2) to Section 483(c) to allow for penalty abatement when a BOE's written request to file a LEOP COS was based on erroneous information, as specified.

LEOP BACKGROUND

The BOE's Legal Entity Ownership Program (LEOP) started in January 1983 as a result of Chapter 1141 of the Statutes of 1981 (AB 152). The resulting Sections 480.1 and 480.2 of the Revenue and Taxation Code require the BOE to participate in the discovery of changes in control and ownership of corporations, partnerships, and other legal entities. It was recognized that such events, which are not evidenced by a recorded document, would fall outside the parameters of assessors' normal means for discovering changes in ownership. Independent discovery of these changes by property tax administrators is difficult because ordinarily there is no recorded deed or notice of a transfer of an ownership interest in a legal entity.

Under the LEOP, the BOE:

- Receives a list from the FTB of legal entities that have reported a change in control or change in ownership on their income tax returns.
- Monitors business publications, such as *Mergers & Acquisitions* and the Wall Street Journal.
- Receives referrals from assessors as a result of information obtained in local publications or business property statement filings.
- Sends a LEOP COS called the "Statement of Change in Control or Ownership of Legal Entities" to each entity. http://www.boe.ca.gov/proptaxes/leop.htm
- Analyzes completed LEOP COS's to determine whether there has been a change in control or ownership.
- Notifies county assessors of changes in control and ownership.

PART 3
CHANGE IN OWNERSHIP PENALTIES – ABATEMENT
Revenue and Taxation Code Section 483

LAW PRIOR TO AMENDMENTS

Section 1620 provides that the board of supervisors of any county may by ordinance create assessment appeals boards for the county to equalize the valuation of taxable property within the county. Thus, in all counties in California either one or more assessment appeals boards or the county board of supervisors performs the duties of a local board of equalization. Nineteen of the 58 counties have not established assessment appeals boards.

Section 482 provides that a penalty applies if a COS or LEOP COS, as required by Sections 480, 480.1, or 480.2, is not timely filed. Section 483 allows the assessee to make a written application for abatement of the penalty to the "county board of supervisors." The county board of supervisors may order the penalty abated if the assessee establishes to their satisfaction that the failure to file the COS or LEOP COS timely was due to reasonable cause and not due to willful neglect.

Despite the reference to the "county board of supervisors," the proper body for an assessee to request penalty abatement of a COS or LEOP COS penalty is:

- with the assessment appeals board in those counties where the board of supervisors has established assessment appeals boards.
- with the local board of equalization where the county board of supervisors sits as the county board of equalization. While a county board of equalization is comprised of the members of the county board of supervisors, the two boards are distinct constitutional bodies and act in different capacities.

Furthermore, Section 1605.5(b) expressly provides that the "county board of equalization" is to hear and decide issues with respect to penalties assessed under Section 482.

AMENDMENTS

This bill amends Section 483 to substitute "county board of equalization or the assessment appeals board" for "county board of supervisors" as the body with which to file a penalty abatement appeal in the case of failure to timely file a change in ownership statement.

LEGISLATIVE BACKGROUND

Other legislation to strengthen change in ownership reporting and discovery are noted as follows:

Real Property Transfers
COS Filed with Assessors - Section 480

AB 843 (Eng) 2007 This BOE sponsored bill was vetoed by Governor Schwarzenegger. It included provisions similar to this bill for a COS but it increased the number of days to file a statement from 45 days to 60 days (rather than 90 days as this bill proposes), increased the penalty cap to $10,000 (rather than $20,000), and did not increase the penalty cap on homes.

AB 926 (Chu) 2006 This BOE sponsored bill was vetoed by Governor Schwarzenegger. It included provisions similar to this bill for a COS but it increased the number of days to file a statement from 45 days to 60 days (rather than 90 days as this bill proposes), increased the penalty cap to $10,000 (rather than $20,000), and did not increase the penalty cap on homes. This bill differed from AB 843 above in that it did not specify the mailing address to be used in mailing a COS.

Legal Entity Ownership Interest Transfers
LEOP COS Filed with BOE - Section 480.1 and 480.2

SB 816 (Ducheny) Stats. 2009, Chapter 622 This California Assessors' Association sponsored bill established penalties in Section 482 when a legal entity does not self report a change in control or change in ownership under Section 64(c) or (d) to the BOE within 45 days of the event. *§§480.1, 480.2, and 482*

It also eliminated automatic penalty extinguishment when a legal entity initially failed to respond to a BOE written request to file a LEOP COS, but responded upon a second request within 60 days. *§§482 and 483*

SB 17 (Escutia – 2005) and SB 17 (Escutia – 2003) In addition to establishing a penalty if a legal entity does not file a LEOP COS with the BOE within 60 days after the date that a change in control or change in ownership occurs (since enacted by SB 816 in 2009), these bills would have also (1) required legal entities to provide information, records, and documents necessary to ascertain if the legal entity has undergone a change in ownership or change in control under Section 64 (c) or (d) upon the written request of the BOE or the assessor and (2) provided that the BOE or the assessor may issue subpoenas for the attendance of witnesses or the production of information or records, if any person fails to provide required information or records for the purpose of securing change in ownership information.

Guide to Change in Ownership Reporting Statutes

RTC Section	**Subject** *Click on link to view sample forms*
64(e)	State Income Tax Return Questions • Corporate – Form 100 - Question J • Partnership – Form 565 - Question T • LLC - Form 568 - Question O • Filed with FTB • FTB refers to BOE for Legal Entity Ownership Program (LEOP)
480	Change In Ownership Statement (COS) • Transfers of Real Property • Filed with local county assessor
480.1	LEOP COS • Transfers of Legal Entity Interests • Legal Entity Ownership Program (LEOP) • Change In Control under §64(c) • Filed with BOE

RTC Section	Subject *Click on link to view sample forms*
480.2	LEOP COS • Transfers of Legal Entity Interests • Legal Entity Ownership Program (LEOP) • Change In Ownership under §64(d) • Filed with BOE
480.3	Preliminary Change in Ownership Report (PCOR) • Filed at document recording • Filed with local county recorder
480.4	Preliminary Change in Ownership Report - Report contents
481	COS and PCOR – Confidentiality
482	Failure to File Penalties • COS - §482(a) [Penalties related to §480] • LEOP COS §482(b) [Penalties related to §§480.1 and 480.2]
483	Failure to File Penalties – Penalty Abatement • COS §483(a) and (b) [Penalties related to §482(a)] • LEOP COS §483(c) [Penalties related to §482(b)]

COMMENTS

1. **Purpose.** To (1) strengthen and improve change in ownership reporting and discovery by increasing the penalty cap, (2) give taxpayers more time to file a COS with the assessor and a LEOP COS with the BOE before penalties for failure to file will be levied, and (3) provide for automatic penalty abatement in specified cases involving a LEOP COS filed with the BOE.

2. **Key Amendments.** The **July 1, 2011** amendments moved the new provisions granting the assessor authority to abate penalties from Section 482 to Section 483. The **May 11, 2011** amendments required a written request to file a COS to specify the real property or manufactured home to which it pertains and require any resulting penalty notice for failure to file the COS to identify the parcel or parcels to which it pertains. Th**e May 3, 2011** amendments deleted language added in the "Important Notice," as suggested in the prior analysis, due to space constraints on the COS. The amendments also specify the assessor is to determine when erroneous information was used in requesting a LEOP COS to be filed and (2) specify that the assessor is to abate the penalty as suggested in the Senate Governance and Finance Committee analysis of this bill.

Part 1. Real Property Transfers
Change in Ownership Statements Filed with Assessors - Section 480

1. **Issue.** With respect to increasing the amount of the penalty, the $2,500 cap has been in law since 1981. The current penalty provisions may be ineffective as an inducement to property owners to report required information to county assessors so they may accurately assess properties after a change in ownership. This can cause assessors to spend limited resources in pursuit of information needed to properly revalue the property, which in turn causes delays in property tax billings. (Note that

in the case of a LEOP COS required to be filed with the BOE, there is no such penalty cap – the penalty is 10% of assessed value.)

2. **The increased penalty will only apply to properties worth more than $2.5 million.** In practical application, the increased penalty only affects properties with an assessed value of more than $2.5 million. For example, taxes on a $1,000,000 property are $10,000 and a 10% penalty would be $1,000. Thus, the penalty for failure to file a COS would be $1,000. Likewise, taxes on a $3,000,000 property are $30,000 and a 10% penalty would be $3,000, resulting in a penalty for failure to file a change in ownership statement of $3,000. SB 507 would increase the penalty only on the $3,000,000 property, in the amount of $500, since under existing law the penalty cap would have been reached at $2,500.

3. **A lower limit for homes.** The rationale for a lower limit for homes is that fewer public resources must be expended to determine the fair market value of a residence without the financial details (such as the purchase price) that the COS would have provided. Homes are the least complicated type of property to appraise for tax purposes. Assessing officials generally have many comparable sales upon which they can make a reasonable estimate of value. Thus, the workload impact to the taxing agency to properly assess a home is significantly less than it would be for a unique property, such as a commercial property, where there are fewer, if any, comparable sales of property of a similar type, use, and size in the immediate vicinity.

4. **The penalty only applies after a formal written request has been made and ignored.** Existing law requires property to be reappraised at its current full market value whenever it changes ownership, and when such a change occurs, the law requires the owner to report the change in ownership to the assessor by filing a COS. However, the law *does not* impose a penalty for failure to file the COS **unless and until the assessor makes a written request** and the owner subsequently fails to file the COS within 45 days. The 45 day period (which this bill would increase to 90 days) runs from the date the written request is made, not the actual date of the change in ownership. It can take months and sometimes years, in the case where a deed was not recorded, for the assessor to uncover an unreported change in ownership and thus mail the COS. When the COS is not filed, assessors must spend additional time and resources pursuing the information necessary to properly revalue the property. And, if multiple prior years' assessments must be adjusted, it will result in roll corrections and escape assessments, compounding the administrative cost.

5. **COSs filed with the assessor help avoid unnecessary administrative costs to appraise a property where the assessment may be subsequently reversed once the taxpayer responds because of the resulting increased taxes.** Many documents that are recorded are ultimately not reassessable events. COSs and PCORs help the assessor determine if the transfer is eligible for one of the many exclusions available. The COS asks specific questions about transfers that would keep the property from being reassessed. For example, a deed may be recorded to remove a person from title that only held a security interest – this is not a reassessable event.

6. **Multiple opportunities to comply before a penalty would be levied upon a taxpayer.** Property owners have three opportunities to file the necessary information with the local assessor.

   - **A PCOR can be filed concurrently when the deed is recorded**. In fact, for real property transactions in which title and escrow companies are involved, as part of their customer service provided, the PCOR is typically filled out for the property owner (which the new owner signs during the closing process) and filed when the escrow company presents the deed for recordation.
   - **No penalty applies if a person properly notifies the assessor, as required by law, that he or she has purchased the property.** As noted above, the law requires that new buyers of property inform the assessor's office within 45 days of a change in ownership that they have acquired the property by filing a COS. There is no penalty for not filing the statement within 45 days.
   - **A taxpayer that has failed to file a PCOR *and* failed to file a COS within 90 days of the actual date of purchase may return the COS mailed to the taxpayer by the assessor. If this is accomplished within 90 days of the date of the written request then no penalty will be applied.** The date of the written request could be a year or more later than the sale and the taxpayer could file a form at any time before that time expires.

Part 2. Legal Entity Ownership Interest Transfers
Change in Ownership Statements Filed with BOE - Sections 480.1 and 480.2

1. **Issue.** Because of changes made by SB 816, which was also sponsored by the CAA, legal entities are at greater risk of penalties if they fail to timely self report a change in ownership to the BOE. This bill gives legal entities more time to comply.

   - **Self Reporting Requirement.** SB 816 created a penalty for failure to self report a Section 64(c) or (d) reassessable event, but did not increase the number of days a legal entity had to fulfill this reporting requirement to the BOE. Previously, while the law required that the legal entity report the event to BOE within 45 days, there was no penalty for failure to do so. Thus, there was no consequence for not complying. This bill would give legal entities an additional 45 days to self report a change in control or change in ownership with the BOE.
   - **Written Requests.** This bill also gives legal entities more time to respond should the BOE request that a legal entity file a LEOP COS in performing its duties to aid in the discovery of unreported events. SB 816 eliminated automatic penalty extinguishment when a legal entity initially failed to respond to a BOE written request to file a LEOP COS, but responded upon a second request within 60 days. This bill would give legal entities an additional 45 days to respond to a BOE request to file a LEOP COS.
   - **Written requests generated by legal entities' answers on California income tax returns.** Assessors report an instance where a legal entity erroneously answered "yes" to questions on its California income tax return indicating a possible change in ownership. This generated a request by the BOE that a LEOP COS be completed by the taxpayer. The legal entity subsequently failed to respond to the BOE's request to file LEOP COS, which triggered a penalty on

property owned by the legal entity. This bill is intended to require abatement of penalty by the assessor in the case of erroneous return information.

- **Abatement by Assessor**. SB 816 deleted a provision that allowed for automatic extinguishment of a penalty for failure to respond to the BOE by giving the legal entity a second opportunity to file the statement within 60 days of receiving notice of the penalty. To alleviate the impact of SB 816, this bill is intended to restore automatic extinguishment of penalties in cases where the legal entity itself erroneously triggered the inquiry that resulted in the levy of a penalty.

2. **What erroneous information might trigger a BOE inquiry?** The BOE is required to participate in the discovery of unreported events. To that end, it could send a LEOP COS to a legal entity for any number of reasons. The purpose of the penalty for non-response is to ensure that legal entities have an incentive to respond to the BOE inquiry. That said, what type of erroneous information would the BOE or the assessor be using to have caused a LEOP COS to be sent to the taxpayer? If a legal entity was asked to file a LEOP COS because the BOE was investigating information in the media about the purchase of a company, the details of which did not meet the standard of a reassessable event, would that be considered erroneous information? Should there be any consequence when a legal entity does not respond to the BOE inquiry? Further, how would a company show that information was erroneous?

Part 3. Penalty Abatement
Assessment Appeals Boards - Section 483

1. **Issue.** The reference in Section 483 to the county board of supervisors creates confusion to tax administrators and taxpayers and is misleading. For clarity, this bill specifies in Section 483 that in those counties with assessment appeals boards, the appeals board will hear penalty abatement appeals for late filed or failure to file penalty related issues. In those counties that do not have assessment appeals boards, the county board of equalization (i.e., the county board of supervisors sitting as the county board of equalization) will hear penalty abatement appeals for late filed or failure to file penalty related issues.

2. **Related Legislation.** SB 947 (Committee on Governance and Finance), sponsored by the BOE, also amends Section 483 to clarify this same issue. The July 1 amendment conforms to the language proposed by SB 947 since it is more comprehensive.

Senate Bill 618 (Wolk) Chapter 596

Solar-use Easement – Enforceable Restriction

Effective January 1, 2012. Among its provisions, amends Section 402.1 of the Revenue and Taxation Code, adds Chapter 6.9 (commencing with Section 51190) to, and amends Section 51255.1 of, the Government Code.

BILL SUMMARY

This bill requires that a "solar-use easement," which this bill creates, be treated as an enforceable restriction for which the assessor must consider its effect on the value of land.

Sponsor: Senator Wolk

LAW PRIOR TO AMENDMENT

Enforceable Restrictions. Revenue and Taxation Code (RTC) Section 110(a) provides that in determining a property's fair market value the effect of any enforceable restrictions must be considered. Additionally, RTC Section 402.1(a) provides that in the assessment of land, the assessor must consider the effect upon the value of any enforceable restrictions to which the use of the land may be subjected. RTC Section 402.1 expressly lists specific types of restrictions that must be considered. One type of restriction listed is a recorded contract with a governmental agency. However, the list of restrictions delineated in RTC Section 402.1 is not an exhaustive list of all possible governmentally imposed restrictions that could be considered as an enforceable restriction.

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 contracts are automatically renewed each year unless other action is taken (i.e., nonrenewal of the contract or immediate cancellation of the contract). In exchange for entering into these contracts, the land and any living improvements (trees and vines) are valued according to their income earning ability. The valuation is based on a statutory formula (outlined in RTC Section 423) that capitalizes the income the land is capable of producing from its agricultural use.

Generally, to immediately cancel a Williamson Act contract, a cancellation fee of 12.5% of the land's fair market value is imposed. However, the cancellation fee can be waived in certain instances. The county assessor is responsible for determining the cancellation valuation of the land for purposes of the cancellation fee. (Government Code Section 51283)

Annual Assessment: Lowest of Three Values. The law provides that each year, property under a Williamson Act contract will be assessed at the lowest of three values:

- Williamson Act value (RTC Section 423)
- Current fair market value (RTC Section 110)
- Factored base year value (RTC Section 110.1)

Thus, landowners participating in the Williamson Act program are guaranteed that land under contract will not be assessed at a greater value than had they not entered the program.

AMENDMENT

Solar-use Easements. This bill allows property owners and counties or cities that are currently parties to a Williamson Act contract to mutually agree to rescind the contract on parcels of land meeting certain criteria and simultaneously enter into a "solar-use easement" which the bill creates by adding Chapter 6.9, entitled "Solar-Use Easement," to Part 1 of Division 1 of Title 5 of the Government Code (GC).

The solar-use easement serves to restrict the use of the land to:

- photovoltaic solar facilities for the purpose of providing for the collection and distribution of solar energy for the generation of electricity, and any other incidental or subordinate agricultural, open-space uses, or
- other alternative renewable energy facilities.

The Department of Conservation, in consultation with the Department of Food and Agriculture, determines whether parcels are eligible for rescission from a Williamson Act contract and placement into a solar-use easement. The criteria for a parcel to be eligible is:

- the land consists predominately of soils with significantly reduced agricultural productivity, as specified, or the land has severely adverse soil conditions, as specified, and
- the parcel is not located on specially designated areas of Important Farmland Series maps, as specified.

County Assessor Provisions. With respect to the property tax and the county assessor, this bill:

- Expressly provides that a "solar-use easement" is an enforceable land use restriction for which the assessor must consider its effect upon the value of the land for assessment purposes. *RTC §402.1(a)(9)*
- Provides that parcels subject to a solar-use easement are to be assessed pursuant to RTC §402.1 during the term of the easement. *GC §51191.7*
- Requires the clerk of the governing body accepting or approving the easement to provide the assessor with a copy of the instrument creating the solar-use easement. *GC §51191.6*
- Requires the assessor to determine the fair market value of land as though free of the easement restriction for purposes of determining the rescission fee. The rescission fee is 6.25% for property in the Williamson Act (12.5% for property in a farmland security zone.). *GC §51255.1(c)*
- Requires the assessor to determine the fair market value of a parcel as though free of the easement restriction should the landowner subsequently seek termination of the easement, for purposes of determining a solar-use easement termination fee. The termination fee is 12.5% of the property's then fair market value. *GC §51192.2(b)and (c)*

Annual Assessment: Lowest of Two Values. The creation of the solar-use easement would not result in a reduction of the base year value of the land. This is because most easements do not meet the change in ownership test in RTC Section 60 and therefore remain taxable to the property owner. However, a solar-use easement would need to be considered when determining the legally permissible highest and best use of the property or for appraisal purposes for annual lien date valuation.

Thus, in practical application, property under a solar-use easement will be assessed at the lower of two values as of each lien date:

- Current fair market value as impacted by the easement (RTC *§§*110 and 402.1)
- Factored base year value (RTC *§*110.1)

IN GENERAL

Creation of Easement. The BOE has generally held that the creation of an easement is not a change ownership of the property subject to the easement and the easement remains taxable to the property owner. Specifically, Assessors' Handbook Section 501 "**Basic Appraisal"** at Page 50, Part I, reads:

> There are no change in ownership statutes or rules dealing specifically with the private grant of an easement or right of way from one landowner to another. Although an easement or right of way generally does not constitute "a transfer of value substantially equivalent to the fee" to the benefited person, as discussed in Chapter 3, courts have determined that a recorded permanent transfer of a present beneficial property right from one parcel to another can be a reassessable event. (*Mitsui Fudosan, Inc.* v. *Los Angeles County*, 219 Cal.App.3d 525.). Where the agreement between the property owners documents a recorded permanent grant of an appurtenant easement that includes present beneficial interests in that property described that are in fact substantially equivalent to the value of the fee, it qualifies as a change in ownership of the easement transferred, per section 60. Most easements do not meet the change in ownership test in section 60 and therefore remain taxable to the property owner; however, they may need to be considered when determining the legally permissible highest and best use for appraisal purposes.

Further, relevant to this bill in regards to conservation easements, Assessors' Handbook 521 "**Assessment of Agricultural and Open-Space Properties**" at Page 17, Part I reads:

> Despite a conservation easement's legal status as an interest in real property, the conveyance of such an interest does not generally constitute a change in ownership of the property subject to the easement, where the primary purpose of the easement is the mere right to enforce *restrictions* (i.e., negative covenants) against the grantor. This is because, in such a case, with respect to the property subject to the easement, the conveyance would constitute neither a transfer of the beneficial use nor a transfer of an interest with a value substantially equivalent to that of the fee. Revenue and Taxation Code section 60 requires that a conveyance satisfy both conditions in order for a change in ownership to occur.

Effect of Use Restrictions on Property Value. With respect to the issue of valuing a property subject to an easement that restricts a property's use, Assessors' Handbook

521 "**Assessment of Agricultural and Open-Space Properties**" at Page 18, Part 1 reads:

> While an easement created pursuant to Civil Code section 815.1 may not give rise to a change in ownership, the restrictions on use are considered enforceable restrictions for purposes of section 402.1, which provides that the assessor must consider the effect upon value of such restrictions. As a practical matter, the majority of conservation easements will be treated for assessment purposes in accordance with section 402.1.
>
> Under section 402.1, the creation of a conservation easement does not result in an automatic reduction in the assessed value of the property subject to the easement. Instead, the assessor must enroll the lower of (1) the existing factored base year value or (2) the current market value considering the restrictions on use imposed by the easement. Only upon a subsequent change in ownership would the assessor establish a new base year value that accounts for the restrictions under the easement.

COMMENTS

1. **Purpose.** The author is sponsoring this bill to provide an additional method for terminating a Williamson Act contract on land for which a solar facility is being proposed. There is some question of whether a solar facility qualifies as a "compatible use" of land under contract. While the Williamson Act recognizes the construction of electric facilities as a compatible use (GC §51238), opinions differ over whether a solar photovoltaic facility qualifies. To avoid uncertainty and potential litigation, some landowners and county officials have terminated the Williamson Act contract (and paid the cancellation fee) before proceeding to build. In other cases, the cancellation fee was waived based on a finding that it was in the public interest to do so. The purpose of this bill is to provide an additional method to terminate a Williamson Act contract in addition methods already authorized under the law.
2. **The Solar-Use Easement Itself.** Generally, most easements do not meet the change in ownership test under the law and therefore remain taxable to the property owner. In practical terms, this means that the act of entering into an easement restricting the future use of the property would not result in any reduction in the current property owner's base year value.
3. **Effect of Use Restrictions on Property Value.** This bill expressly provides that the solar-use easement is to be considered an enforceable restriction under RTC Section 402.1. This means that for each lien date assessment, the assessor would value the property at the lower of its current market value (as impacted by the easement) or its factored base year value. Only upon a subsequent change in ownership would the assessor establish a new base year value that accounts for the restrictions imposed under the easement.
4. **Removal of the Property from the Williamson Act.** Removal of a property from the Williamson Act does not result in an immediate increase in its assessed value. The value for property tax purposes would be adjusted for the next fiscal year's taxes. Specifically, for the next lien date (January 1) following cancellation, the lower of two values would be enrolled as the basis of the tax bill prepared for the upcoming fiscal year, either: (1) its factored base year value (i.e., Proposition 13

protected value) or (2) current market value as impacted by the easement as noted above. Thus, once property is removed from the Williamson Act, if the basis of the prior assessment was the Williamson Act capitalization of income method, the property taxes could increase. Furthermore, the easement would not result in a reduction of property taxes unless the current market value of the property as impacted by the easement is less than the property's factored base year value.

5. **Assessor's Task in Fee Calculation: Williamson Act Cancellation Fee and Solar-use Easement Rescission Fee and Termination Fee.** When a Williamson Act contract is cancelled, assessors are required to determine the current market value of the land as though it were free of contractual restrictions (GC Section 51283) for purposes of the basis of a cancellation fee. The cancellation fee is 12.5% of the value (25% in the case of a farmland security zone). This bill similarly requires the assessor to determine the current market value of the land as the basis for the newly created "rescission fee" of 6.25% of value (or 12.5% in the case of farmland security zone). Additionally, should a property owner wish to terminate the solar-use easement in the future, the assessor would be required to determine a value for the basis of the "termination fee" of 12.5% (or 25% in the case of a farmland security zone).

Senate Bill 947 (Committee on Governance and Finance) Chapter 351

Property Tax Omnibus Bill

Effective January 1, 2011. Amends Sections 63.1, 69, 69.3, 69.5, 74.5, 74.6, 276.2, 278, 483, 531.1, 830, 862, 1150, 1154, 2821, 4831, 5303, 11551, and 11596 of, adds Section 271.5 to, and repeals Section 75.23 of, the Revenue and Taxation Code.

BILL SUMMARY

The BOE-sponsored provisions of the bill related to the property tax, do all the following in the Revenue and Taxation Code This property tax omnibus bill:

- Amend Revenue and Taxation Code Section 63.1 to expressly allow the parent-child exclusion for transfers of interests in cooperative housing corporations. (Housekeeping)
- Amend Section 69, 69.3, and 69.5 to clarify the definition of "substantially damaged or destroyed." (Housekeeping)
- Amend Section 74.5 to update the citations to the building codes for purposes of the new construction exclusion for seismic safety. (Technical)
- Amend Section 74.6 to correct the reference to the California Constitution as amended by Proposition 13 of 2010. (Technical)
- Add Section 271.5, repeal Section 75.23, and amend Section 531.1 to clarify that property tax exemptions cease as of the date of sale or transfer of the property. (Housekeeping)
- Amend Section 276.2 to extend the time a claimant may file for the disabled veterans' exemption upon a property's eligibility after the lien date. (Housekeeping)
- Amend Section 278 to specify that the disabled veterans' exemption notice shall be mailed annually, prior to the lien date, to claimants who received the exemption in the immediately preceding year. (Housekeeping)
- Amend Section 483 to clarify the local body through which an assessee must appeal a penalty for failure to timely file a change in ownership statement. (Housekeeping)
- Amend Sections 830 and 862 to expressly provide in statute that state assessee penalties for failure to timely provide information may be partially abated. (Housekeeping)
- Amend Section 4831 to allow floating homes and manufactured homes to receive a decline in value after the roll has closed. (Housekeeping); and,
- Amend Sections 11551 and 11596 of the Private Railroad Car Tax Law to raise the statutory threshold from more than $15,000 to more than $50,000 for requiring a 10-day public record of proposed determinations prior to granting refunds or cancellations of tax. (Housekeeping)

The California Assessors' Association (CAA) sponsored provisions of the bill related to the property tax, do all the following in the Revenue and Taxation Code:

- Amend Section 69.5 to give homeowners transferring a base year value from one home to another up to 6 months to request that any new construction to the new home be included in the base year value transfer.
- Amend Sections 1150, 1154, and 5303 to update obsolete references in the definition of "certificated aircraft," "air taxi," and "aircraft;" (Technical) and
- Amend Section 2821 to change the period that a person filing an affidavit of interest has to apply to the tax collector to have a parcel separately valued. (Housekeeping)

Sponsor: Board of Equalization and California Assessors' Association

PARENT-CHILD CHANGE IN OWNERSHIP EXCLUSION
Allow the exclusion in transfers of interests in cooperative housing corporations.
Revenue and Taxation Code Section 63.1

LAW PRIOR TO AMENDMENT

Parent-Child Change in Ownership Exclusion. Proposition 58, which was passed by the voters of California on November 4, 1986, added subdivision (h) to Section 2 of Article XIII A of the California Constitution. Subdivision (h) provides, in part, that the terms "purchased" and "change in ownership" shall not include the purchase or transfer of the principal residence, or the first $1 million of the full cash value of all other real property, between parents and their children, as defined by the Legislature. Assembly Bill 47 (Ch. 48, Stats. 1987) added Section 63.1 to the Revenue and Taxation Code to implement Proposition 58. Proposition 193, passed by the voters on March 26, 1996, extended this exclusion to transfers from grandparents to grandchildren under certain circumstances.

Section 63.1(c)(8) defines "real property" as land and improvements per Section 104 and specifically excludes any interest in a legal entity.

Change in Ownership – Cooperative Housing Corporations. Revenue and Taxation Code Section 60 provides a general definition of "change in ownership" which is a transfer of present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

In addressing the practical application of a change in ownership of a real estate project with common areas or facilities, Section 65.1(b) specifies if there is a change in ownership of a unit or lot, then only that particular unit or lot and a share in the common area is to be reappraised. These provisions apply to cooperative housing corporations. In addition, Section 61(i) expressly provides that a transfer of stock in a cooperative housing corporation is a change in ownership requiring reassessment of the property.

In a cooperative housing corporation, the corporation holds title to the project real estate, with shares in the corporation in turn owned by the project's occupants. Ownership of shares provides the right to lease and use one of the project's dwelling units. The owners also hold leasehold interests in specific units combined with proportional ownership of the shares in the cooperative housing corporation.

A cooperative housing corporation is treated as real property for change in ownership purposes (Section 61(i)) and is specifically allowed by Section 69.5(c)(1), the over

55/disabled base year value transfer provisions. Moreover, a unit or lot within a cooperative housing corporation is eligible for the homeowners' exemption pursuant to Section 218. However, the transaction is a transfer of stock of a corporation and not a transfer of real property and Section 63.1(c)(8) precludes applying the parent-child exclusion to transfers of legal entity interests.

AMENDMENT

This provision amends Section 63.1 to extend the parent-child exclusion to a unit or lot within a cooperative housing corporation.

COMMENT

Section 61(i) expressly provides that a transfer of stock in a cooperative housing corporation is a change in ownership that requires reassessment of the property, unless an exclusion applies. There are relatively few cooperative housing corporations in California and the issue of the application of the parent-child exclusion to cooperative housing corporations recently surfaced. It is inequitable not to provide the parent-child exclusion to these homes and this provision would address that inequity.

BASE YEAR VALUE TRANSFERS
Clarify the definition of "substantially damaged or destroyed."
Revenue and Taxation Code Section 69, 69.3 & 69.5

LAW PRIOR TO AMENDMENT

Proposition 60, which was passed by the voters in November 1986, amended Section 2 of Article XIIIA of the California Constitution to allow persons over the age of 55 to sell their principal place of residence (original property) and transfer the base year value to a replacement principal place of residence (replacement property) that is purchased or newly constructed within the same county. Proposition 90, which was passed by the voters in November 1988, gave the county board of supervisors the option to extend these provisions to a replacement property that is located in a different county than the original property. Proposition 110, which was passed by the voters in June 1990, extended these provisions to severely and permanently disabled persons of any age. Eight counties have ordinances implementing the intercounty option – Alameda, El Dorado, Los Angeles, Orange, San Diego, San Mateo, Santa Clara, and Ventura. All three propositions are implemented by Revenue and Taxation Code Section 69.5.

Section 69.5 also allows the transfer of a base year value to a replacement property from an original property that was substantially damaged or destroyed by misfortune or calamity and sold in its damaged state. “Substantially damaged” means physical damage amounting to more than 50 percent of the property’s current market value immediately prior to the disaster. In some locations land values comprise more than 50% of a property’s total value. For example, if a home worth $800,000 is completely destroyed in a wildfire and the bare lot is worth $450,000, i.e. more than 50% of the property’s total value, the homeowner would not be eligible for a base year value transfer even though the home itself (the improvement) was 100% destroyed. Similar language was contained in Sections 69 and 69.3, before these sections were amended by 2009 legislation sponsored by the BOE (SB 824, Ch. 67, Stats. 2009).

AMENDMENT

This bill amends the provisions defining "substantially damaged or destroyed" in Section 69, 69.3 and 69.5 to be consistent and enhance clarity.

COMMENT

This provision ensures that disaster victims who decide to relocate rather than rebuild, will be eligible for a base year value transfer in situations where the land value comprises more than 50% of the property's total value.

BASE YEAR VALUE TRANSFERS: POST TRANSFER NEW CONSTRUCTION
Give homeowners more time to claim.
Revenue and Taxation Code Section 69.5

LAW PRIOR TO AMENDMENT

Under existing law, real property is generally reassessed to its current fair market value whenever there is a "change in ownership." However, under certain circumstances, property owners may avoid reassessment of a particular property by way of either a change in ownership exclusion or a base year value transfer. (California Constitution Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60 - 69.5)

Revenue and Taxation Code Section 69.5 provides that persons over the age of 55 may transfer their base year value from one home to another when they purchase a new home of equal or lesser value that is located in the same county. Additionally, eight counties (Alameda, El Dorado, Los Angeles, Orange, San Diego, San Mateo, Santa Clara, and Ventura) permit persons to transfer base year values from homes located in other counties. This once-in-a-lifetime benefit gives seniors "property tax relief" by avoiding the reassessment provisions of Proposition 13. Instead, by transferring the Proposition 13 protected value from one home to another, there is essentially no change in the amount of property taxes paid. These provisions are also available to persons without regard to age if they become severely and permanently disabled.

New Construction – Post Transfer. Section 69.5(h)(4)(A) provides that after a base year value transfer has been granted, the homeowner can make improvements to the new home, such as a room addition or a swimming pool, and in some cases, the new construction will not be assessed. The new construction will not be assessed if (1) the construction is completed within two years of the sale of the former home and (2) the value of the new construction plus the market value of the replacement home when purchased does not exceed the market value of the original property as determined for the original claim for a base year value transfer. To exempt the new construction from assessment, the property owner must have notified the assessor in writing within 30 days after completion of the new construction. Typically, this notification is done by filing another claim.

AMENDMENT

New Construction – Post Transfer. This bill amends Section 69.5(h)(4)(A) to increase from 30 days to 6 months the time the property owner has to notify the assessor when the additional new construction is complete.

IN GENERAL

Under Proposition 13, property is reassessed to its current market value only after a change in ownership. Generally, the sales price of a property is used to set the property's assessed value and annual increases to that value are limited to the rate of inflation, not to exceed 2%.

Base Year Values. At the time of the ownership change, the value of the property for property tax purposes is redetermined based on current market value. The value initially established is referred to as the "base year value." Thereafter, the base year value is subject to annual increases for inflation, but at no more than 2% per year. This value is referred to as the "factored base year value." This system, established by Proposition 13, results in substantial property tax savings for long term property owners.

Base Year Value Transfers. Voters have approved three constitutional amendments permitting persons to "transfer" their Proposition 13 base year value from one home to another that is of equal or lesser value. The base year value transfer avoids reassessment of the newly purchased home to its fair market value.

- **Intracounty.** Proposition 60, approved by the voters on November 4, 1986, amended Section 2 of Article XIII A of the California Constitution to allow persons over the age of 55 to sell a principal place of residence and transfer its base year value to a replacement principal place of residence within the same county.
- **Intercounty.** Proposition 90, approved by the voters on November 8, 1988, extended these provisions to a replacement residence located in another county on a county optional basis. Currently eight counties accept transfers from outside their county.
- **Disabled Persons**. Proposition 110, approved by the voters on June 5, 1990, extended these provisions to severely and permanently disabled persons of any age.

Section 69.5 provides the statutory implementation for all three of these propositions.

BACKGROUND

AB 321 (Niello) from 2009 and AB 2579 (Niello) from 2008, in part, also proposed changes concerning notification of new construction completed post base year value transfer. These bills were also sponsored by the CAA. However, those bills would have amended Section 69.5(h)(4)(A) to delete the provision that the property owner notify the assessor when the additional new construction is complete within 30 days of completion. Because the assessor already receives copies of all building permits issued in the county, under that bill the assessor would automatically extend the benefit of the base year value transfer to the new construction, when applicable, without any further action or paperwork from the property owner.

AB 321 was held in the Assembly Appropriations Committee and AB 2579 was held in the Senate Appropriations Committee.

COMMENTS

This bill gives homeowners more time to have the value of new construction to their replacement home included under the initial base year value transfer. Homeowners that do not file another base year value transfer claim to notify the assessor within 30 days of completing the new construction are barred from receiving the full benefit of a base year value transfer to which they are otherwise entitled.

Still Must Meet Equal or Less Than Requirement. The value of the new construction plus the market value of the replacement home when purchased still may not exceed the market value of the original property as determined for the original claim for a base year value transfer.

SEISMIC SAFETY NEW CONSTRUCTION EXCLUSION
Update the citations to the building codes.
Revenue and Taxation Code Section 74.5

LAW PRIOR TO AMENDMENT

Existing law provides a new construction exclusion for certain improvements made for seismic safety purposes. Qualifying construction includes the construction or reconstruction of seismic retrofitting components, as defined. The Legislature has defined seismic retrofitting components as seismic retrofitting improvements and improvements utilizing earthquake hazard mitigation technologies. Specifically, Section 74.5 defines "seismic retrofitting" as those items referenced in Appendix Chapters 5 and 6 of the Uniform Code for Building Conservation of the International Conference of Building Officials. "Improvements utilizing earthquake hazard mitigation technologies" means improvements that use technologies such as those referenced in Part 2 (commencing with Section 101) of Title 24 of the California Building Code and similar seismic provisions in the Uniform Building Code.

However, according to both the California Seismic Safety Commission and the California Building Standards Commission, California no longer uses the model building code entitled the *Uniform Code for Building Conservation* as a base document for the *California Code for Building Conservation*. There was a name change in this particular model building code to the *International Existing Building Code,* published by the International Code Council. The base document is now the *California Existing Building Code*. In addition, California is no longer using the *Uniform Building Code* (*UBC*) as a base document for the *California Building Code* as the *UBC* is no longer published but instead uses the *International Building Code*, also published by the International Code Council.

AMENDMENT

This provision amends Section 74.5 to reference the current model building code used by industry.

COMMENT

The Seismic Safety Commission and the California Building Standards Commission reviewed Section 74.5 and suggested that the statues be amended to reference the current standards used by industry. This provision simply updates those references.

The amendments (although not indicated by strike out and underline in the bill as printed when introduced) strike out an explicit reference to Part 2 of Title 24 of the California Building Code.

DISABLED ACCESS NEW CONSTRUCTION EXCLUSION
Correct the reference to the California Constitution as amended by Proposition 13 of 2010.
Revenue and Taxation Code Section 74.6

LAW PRIOR TO AMENDMENT

The voters of California approved Assembly Constitutional Amendment 8 (Proposition 177) on June 7, 1994. This amendment authorizes the Legislature to exclude from the term "new construction" certain types of construction performed on an existing building to make the building more accessible to, or usable by, a disabled person. Proposition 177 added paragraph (5) to subdivision (c) of Section 2 of Article XIII A of the California Constitution and Section 74.6 was added to the Revenue and Taxation Code to implement its provisions.

In June 2010, Proposition 13 was approved to amend the California Constitution to make changes to the new construction exclusion for seismic safety improvements. These amendments deleted paragraph (4) of subdivision (c) of Section 2 of Article XIII A of the California Constitution and renumbered former paragraph (5) as paragraph (4). Consequently, the cross reference in Section 74.6 to paragraph (4) is now incorrect.

AMENDMENT

This provision amends Section 74.6 to correct the constitutional reference to reflect the recent amendments made by Proposition 13 (2010).

COMMENT

This change is purely technical.

COLLEGE, CEMETERY, CHURCH, RELIGIOUS, EXHIBITION, VETERANS' ORGANIZATION, TRIBAL HOUSING, OR WELFARE EXEMPTION
Clarify these exemptions cease on the date of sale or transfer if a property receiving an exemption is sold or transferred.
Revenue and Taxation Code Sections 75.23, 271.5, & 531.1

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 271 allows for the cancellation or refund of taxes on properties on the regular roll that are acquired by various exempt organizations after the lien date (January 1) but prior to the beginning of the fiscal year (July 1). It allows for a similar cancellation or refund of taxes for organizations that do not come into existence until after the lien date and thereafter acquire properties before the beginning of the fiscal year.

For organizations that acquire properties after the fiscal year begins (on or after July 1), the taxes for that fiscal year are either canceled or refunded in proration to the number of days in the fiscal year that the property was owned by the organization. To receive the cancellation, refund, or proration, an application for the exemption must be filed within 90 days from the first day of the month following the month in which the property was acquired or by February 15 of the following calendar year, whichever occurs earlier." For example, this means that for a property acquired August 7, 2011, a claim must be filed by November 29, 2011 to have the full amount of the prorated exemption cancelled or refunded (within 90 days of September 1, 2010). However, if an

organization does not file a claim within this time period but files an exemption claim afterwards, late-filed penalties may apply, with the maximum tax not to exceed $250.

With respect to the disabled veterans' exemption, Sections 276.2 and 276.3 together effectively allow for the seamless transfer of the exemption from one home to another by immediately cancelling the exemption on the prior home and allowing a new exemption to be filed on the new home. Specifically, Section 276.2 allows an exemption claim to filed for property acquired after the lien date. Section 276.3 provides for the termination of the exemption when an individual sells or otherwise transfers the property to a person ineligible for the exemption. For other exemptions, Section 271 allows an organization to file a claim for refund for property acquired after the lien date.

In the case of a supplemental assessment, Section 75.23 addresses the issue that an exemption does not apply to property as of the date of change in ownership if the transferee does not qualify. Confusion has arisen since Section 75.23 applies to all exemptions, including the provisions of Sections 276.2 and 276.3. Termination of the disabled veterans' exemption in Section 276.3 was added in 2000 to a section following the statute that addresses eligibility for property acquired after the lien date. Section 75.23 was added in 2005 to provide that the exemption does not apply when property is sold and supplemental assessment is issued, but it doesn't expressly provide that the exemption shall be terminated. The current statutes are disjointed resulting in confusion for tax practitioners. The logical sequence would be to place the termination of the exemption statute after the eligibility statute (Section 271).

AMENDMENT

This provision repeals Section 75.23 and adds Section 271.5 to the Revenue and Taxation Code to clarify that property tax exemptions cease as of the date of sale or transfer of the property. In the case where the new owner of the property qualifies for any exemption, then an application for the applicable exemption on the new property would be filed with the assessor as provided in Section 271.

COMMENT

This new section would be added immediately following Section 271, the statute that allows for a property tax exemption to be applied to property acquired after the lien date, which would be consistent with the statutes that provide for the termination of the disabled veterans' exemption. As a result of adding this section, Section 75.23 becomes duplicative and Section 531.1 requires amendment to provide for an escape assessment when the exemption has been erroneously allowed to a property not eligible.

DISABLED VETERANS' EXEMPTION – FILING PERIOD
Extend the time a claimant may file for the exemption upon a property becoming newly eligible after the lien date.
Revenue and Taxation Code Section 276.2

LAW PRIOR TO AMENDMENT

Current law provides for the disabled veterans' exemption to be granted on a property that becomes eligible after the lien date provided a timely and appropriate claim is filed. Section 276.2(a) currently states that a claim must be filed on or before the lien date in the calendar year next following the calendar year in which the property became eligible. Thus an eligible claimant who purchases a property on December 28, 2010 must file a claim by January 1, 2011, which is only four days after the property became eligible. This may not be enough time to gather, complete, and submit the paperwork with the county assessor. In practice, some counties may already allow the extra time to file, but this amendment would clarify the procedure.

AMENDMENT

This provision amends Section 276.2 to extend the time a disabled veteran has to file a claim to receive the full amount of the disabled veterans' exemption on a newly eligible property.

COMMENT

This change gives claimants who purchase a property late in the calendar year more time (up to 90 days) to file for the property tax exemption. A claimant who buys a property in early January has nearly a full year to file the required claim and receive the full benefit of the exemption. Conversely, a claimant who buys a home on December 31 only has 1 day to file the claim to receive the full amount of the exemption, otherwise the exemption defaults to a partial exemption.

DISABLED VETERANS' EXEMPTION – ANNUAL NOTICE
Specify that the notice shall be mailed prior to the lien date to those claimants who received the exemption in the immediately preceding year.
Revenue and Taxation Code Section 278

LAW PRIOR TO AMENDMENT

The disabled veterans' exemption requires low-income filers to annually file before February 15. For the basic disabled veterans' exemption, there is a one-time filing. Current law requires the assessor to mail an annual notice to all recipients of the disabled veterans' exemption in the prior year setting forth the eligibility requirements of the exemption and the circumstances under which a property becomes ineligible. The notification must be returned by June 30 of the year following the year the property became ineligible to avoid penalties and interest. Current law does not provide a more specific time frame as to when this notice shall be mailed to the claimants.

Sections 254.5(d), 256, 256.6, and 257.1 relate to change in ineligibility notices for church, cemetery, religious and certain welfare exemptions. They all specifically state that assessors shall, *prior to the lien date*, mail a notice to every claimant who received the exemption in the immediately preceding fiscal year. The "Calendar of Important Dates" published in the BOE's Property Taxes Law Guide indicates the mailing of the

Disabled Veterans' Change in Eligibility Form to be anytime between January 1 and December 31.

In addition, current law requires the assessor to mail out a change in eligibility notice to all disabled veterans who received the exemption in the immediately preceding year. However, the exemption also is available to the spouse of a deceased veteran. Thus, the requirement to mail a notice to all disabled veterans should instead provide that the notice be mailed to all claimants for the disabled veterans' exemption.

AMENDMENT

This provision amends Section 278 to specify that the assessor is to mail the BOE-prescribed form BOE-261-GNT, Change of Eligibility Report, prior to the lien date, similar to the exemptions mentioned previously.

COMMENT

Since claimants are required to notify the assessor on or before June 30 of the year following the year the property became ineligible, this amendment allows the taxpayer time to return the notice, if required, in a timely fashion to avoid any penalties. In addition, the requirement to mail a notice to all disabled veterans should instead provide that the notice be mailed to all claimants for the disabled veterans' exemption.

CHANGE IN OWNERSHIP STATEMENT PENALTY APPEALS

Clarify that in counties that have established an assessment appeals board, the appeals board, rather than the Board of Supervisors, is to hear change in ownership penalty appeals.

Revenue and Taxation Code Section 483

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 463 provides that a 10 percent penalty applies if a person who is required to file an annual property statement fails to file the statement within the time limit specified by Section 441. This section also allows the penalty to be abated if the assessee establishes to the satisfaction of the county board of equalization or the assessment appeals board that the failure to file the property statement timely was due to reasonable cause and not willful neglect.

Section 482 provides that a penalty applies if a change in ownership statement, as required by Sections 480, 480.1, or 480.2, is not timely filed. Section 483 allows the penalty to be abated by the county board of supervisors if the assessee establishes to their satisfaction that the failure to file the change in ownership statement timely was due to reasonable cause and not due to willful neglect.

County Boards of Equalization. By the Revenue Act of 1857, the California Legislature designated each county board of supervisors to serve as the county board of equalization. Section 16 of Article XIII of the Constitution, provides in part:

> The county board of supervisors, or one or more assessment appeals boards created by the county board of supervisors, shall constitute the county board of equalization for a county….

Additionally, Section 1620 provides that the board of supervisors of any county may by ordinance create assessment appeals boards for the county to equalize the valuation of taxable property within the county. Thus, in all counties in California either one or more

assessment appeals boards or a county board of supervisors perform the duties of a local board of equalization. In 19 counties, the board of supervisors also serves as the county board of equalization. While a county board of equalization is comprised of the members of the county board of supervisors, the two boards are distinct constitutional bodies and act in different capacities.

Section 1605.5 (b) states that the appeals boards are to hear and decide issues with respect to penalties assessed under Section 482.

In a recent Letter to Assessors on the Legal Entity Ownership Program (LEOP) penalty process, BOE staff opined that, notwithstanding the Section 483 reference to the board of supervisors, an assessee must make its request for penalty abatement to the local board of equalization or the assessment appeals board. This is consistent with both Rule 302, which specifies that the appeals boards are to hear and decide penalty issues, and Section 1605.5 (b) which says the same thing.

AMENDMENT

This bill amends Section 483 to substitute "county board of equalization or the assessment appeals board" for "county board of supervisors" as the body with which to request penalty abatement appeal in the case of failure to timely file a change in ownership statement.

COMMENT

To be consistent with Section 463 and Rule 302, this provision changes Section 483 to expressly provide that the county board of equalization or the assessment appeals board is to abate the penalty for failure to timely file a change in ownership statement.

Related Legislation. SB 507 (DeSaulnier) also proposes to amend Section 483 to clarify that in those counties that have assessment appeals boards, the appeals board rather than the county board of supervisors, are to hear issues related to penalty abatement. While SB 947 addresses both types of penalties (subdivision (a) of 483 for Section 480 related penalties (Section 482(a)) and subdivision (b) of Section 483 for Section 480.1 and 480.2 related penalties (Section 482(b)), SB 507 is limited to the penalties imposed under subdivision (b) of 483, which is applied for failure to file a change in ownership statement with the BOE pursuant to Section 480.1 and 480.2.

STATE ASSESSEE PENALTY ABATEMENT

Expressly provide in statute that state assessee penalties for failure to timely provide information may be partially abated.

Revenue and Taxation Code Sections 830 & 862

LAW PRIOR TO AMENDMENT

Under existing law, state assessees must annually provide certain information to the BOE. Failure to provide this information results in the application of a penalty. The calculation of the penalty varies depending upon the type of information found to be deficient.

Any penalty imposed on a state assessee for failure to provide information is capped at $20,000,000 of assessed value which, at the general 1% tax rate, means a maximum penalty of $200,000.

Under existing law, where an assessee establishes to the satisfaction of the BOE that the failure to file the property statement or any of its parts within the time required was due to reasonable cause and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the BOE may order the penalty abated if the assessee files a written application for abatement of the penalty within the time prescribed by law for the filing of applications for assessment reductions.

The existing statutory language does not expressly authorize the BOE to abate the penalty *in part* and the law is silent on the matter. Webster's defines "abate" to mean "to make less in amount, degree, force, etc." Because Sections 830 and 862 do not expressly address partial abatement, this has caused uncertainty and confusion for property owners and tax practitioners who address this issue infrequently.

AMENDMENT

This provision amends Sections 830 and 862 to add the phrase "in whole or in part" to clarify that a penalty for failure to provide timely information can be partially abated.

COMMENT

This provision expressly provides that a penalty may be abated in whole or in part in accord with the BOE's current administrative practice and serves to provide clarity to property owners and tax practitioners.

AIRCRAFT
Update References
Revenue and Taxation Code Sections 1150, 1154, 5303

LAW PRIOR TO AMENDMENT

Certificated Aircraft. Related to the provisions of law for the assessment and taxation of certificated aircraft under Article 6 of Part 2 of the Revenue and Taxation Code (beginning with Section 1150), "certificated aircraft" as defined in Section 1150 means aircraft operated by an air carrier or foreign air carrier engaged in air transportation, as defined in subdivisions (3), (5), (10), and (19) of Section 101 of Title I of the "Federal Aviation Act of 1958" (P.L. 85-726; 72 Stat. 731), while there is in force a certificate or permit issued by the Civil Aeronautics Board of the United States, or its successor, or a certificate or permit issued by the California Public Utilities Commission, or its successor, authorizing such air carrier to engage in such transportation.

Air Taxi. Section 1154 defines "air taxi" as aircraft used by an air carrier which does not utilize aircraft having a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds in air transportation and which does not hold a certificate of public convenience and necessity or other economic authority issued by the Civil Aeronautics Board of the United States, or its successor, or by the California Public Utilities Commission, or its successor.

Aircraft. Related to the provisions of law for the assessment and taxation of general aircraft under Part 10 of the Revenue and Taxation Code (beginning with Section 5301), Section 5303 excludes from the definition of "aircraft," aircraft exclusively operated by an "air carrier or foreign air carrier" engaged in "air transportation" while a certificate or permit issued by the Civil Aeronautics Board of the United States or the California Public Utilities Commission (or their successors) authorizing the air carrier to engage in air transportation.

- The definition of "air carrier" or "foreign air carrier" is by cross reference to the definition in subdivisions (3) and (19) of Section 101 of Title 1 of the "Federal Aviation Act of 1958" (P.L. 85-726; 72 State. 731).
- The definition of "air transportation" is by cross reference to the definition in subdivision (10) of Section 101 of Title 1 of the "Federal Aviation Act of 1958" (P.L. 85-726; 72 State. 731).

AMENDMENT

This bill updates the code references in federal law to the appropriate provisions in Section 40102 of Title 49 of the United States Code. It would also update the referenced federal agency to the Federal Aviation Administration and delete the reference to the California Public Utilities Commission.

COMMENT

The amendments simply update and delete obsolete statutory references.

SEPARATE ASSESSMENT REQUESTS
Time period to file applications
Revenue and Taxation Code Section 2821

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 327 provides that the assessor may renumber or re-letter parcels or prepare new map pages to show combinations or divisions of parcels.

Section 2821 allows any person filing an affidavit of interest to apply to the tax collector to have any parcel separately valued for the purpose of paying property taxes. Section 2823 requires the assessor to then determine the separate valuation of that individual interest in the parcel.

Applications requesting separate assessment for the purpose of paying property taxes must be made during the current fiscal year (July 1 to June 30). However, the county board of supervisors may prohibit these applications during the 10 working days preceding each tax installment delinquency date (December 10 and April 10) and during the 10 working days preceding June 30 of each year.

Separate valuations are prohibited under Section 2823(b) when the parcel is covered by a subdivision map filed for recordation with the county recorder after the lien date (January 1) immediately preceding the current fiscal year. However, with respect to requests for separate valuation of new subdivision lots (i.e., parcel splits) created after the lien date, this prohibition can be waived if the board of supervisors adopts a resolution. Typically, a subdivision developer will request that separate assessments be made, so that a separate tax bill would be prepared for each individual lot on an appropriate pro rata portion.

Generally, any subdivision of property for the purpose of sale, lease, or finance is subject to the Subdivision Map Act. Subdivisions of five or more parcels require local government approval of both a tentative subdivision map, which is discretionary, subject to whatever conditions are established by local ordinance, and a final subdivision map, which is ministerial once all of the conditions of the tentative map have been fulfilled. Subdivisions of four or fewer parcels require local government approval of a parcel map,

which is also discretionary. In either case, once a map is approved by the local government, the clerk of the council or board of supervisors transmits the map to the county recorder for recordation. The county recorder has ten days to accept or reject the map for recordation.

AMENDMENT

This bill amends Section 2821 to allow the board of supervisors to accept applications for requests for separate assessment between July 1 and March 31. Thus, in those counties, applications would not to be accepted in the months of April, May, and June.

COMMENT

According to the CAA, this provision is a follow up to legislation the CAA sponsored to amend Section 2823 and included in SB 822 (Ch. 204, Stats. 2009). That bill allowed assessors to create separate valuations of 5 or more lots (i.e., parcel splits) created after the lien date (January 1) that will ultimately be reflected in separate tax bills that are mailed by November 1. (The assessor must complete the roll by July 1.). The CAA states that in order to allow enough time to process an application for separate assessment, from initial processing to the issuance of the resulting tax bill, an application deadline of April 1 is proposed.

DECLINES IN VALUE – EXTRA PROCESSING TIME
Allow floating homes and manufactured homes to receive a decline in value after the roll has closed.

Revenue and Taxation Code Section 4831

LAW PRIOR TO AMENDMENT

Section 4831(c) gives counties the authority to reduce assessed values, via a roll correction, within one year after the assessment roll is completed and delivered to the auditor. The authority to reduce assessed values after delivery to the auditor is limited to those situations where the assessor failed to properly reflect a decline in the taxable value of the real property pursuant to Section 51(a)(2). The extra time to reduce assessments was enacted to reflect that after a major decline in real estate prices, there is insufficient time to process all the declines in value.

In Letter to Assessors 95/54, BOE staff opined that the authority to reduce values for a decline in value applies only to real property and does not apply to manufactured homes because they are classified as personal property under Section 5801(b)(2). Similarly, Section 229 provides that a floating home is not a vessel but is treated as real property under Section 229 for property tax assessment purposes.

In actual practice, it is likely that many counties grant a decline in value to these property types after the roll is closed, as it would be inequitable to do otherwise.

AMENDMENT

This provision amends Section 4831 to allow an assessor to correct the roll to apply a decline in value to floating homes and manufactured homes.

COMMENT

This provision is purely a housekeeping change.

PRIVATE RAILROAD CAR TAX
Raise the statutory threshold from more than $15,000 to more than $50,000 for requiring a 10-day public record of proposed determinations prior to granting refunds or cancellations of tax.
Revenue and Taxation Code Sections 11551 & 11596

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 11551 prescribes the manner in which refunds are to be made with respect to the Private Railroad Car Tax. Once the BOE has made a determination that a person has made an overpayment, Section 11551 allows the BOE to credit the overpayment against any current liabilities the person owes to the BOE, and then authorizes the BOE to refund the difference, if any, to the person who made the overpayment. Section 11551 also requires the BOE to prepare a public record for determinations over a certain amount. Under the existing statute, a determination to grant a refund over $15,000 must be available as a public record for at least 10 days prior to the effective date of the determination in order to fulfill the public record requirement.

However with the exception of the Private Railroad Car Tax, all other tax and fee programs administered by the BOE have a threshold of over $50,000:

Sales and Use Tax – Section 6901
Use Fuel Tax – Section 9151
Insurance Tax – Section 12977
Cigarette and Tobacco Products Tax – Section 30361
Alcoholic Beverage Tax – Section 32401
Timber Yield Tax – Section 38601
Energy Resources Surcharge – Section 40111
Emergency Telephone Users Surcharge – Section 41100
Hazardous Substances Tax – Section 43451
Integrated Waste Management Fee – Section 45651
Oil Spill Response, Prevention, and Administration Fees – Section 46501
Underground Storage Tank Maintenance Fee – Section 50139
Fee Collection Procedures Law – Section 55221

Revenue and Taxation Code Section 11596 prescribes the manner in which cancellations are to be made with respect to the Private Railroad Car Tax. Once the BOE determines that a person has made an overpayment, Section 11596 allows the BOE to credit the overpayment against any current liabilities the person owes to the BOE, and then authorizes the BOE to cancel the difference, if any. Section 11596 also requires the BOE to prepare a public record for determinations over a certain amount. Under the existing statute, a determination to grant a cancellation over $15,000 shall be available as a public record for at least 10 days prior to the effective date of the determination in order to fulfill the public record requirement.

AMENDMENT

This provision amends Sections 11511 and 11596 to raise the threshold for the public record requirement from an amount in excess of $15,000 to an amount in excess of $50,000 to conform the statutory limit for Private Railroad Car Tax refunds and cancellations to those in effect for other tax programs administered by the BOE.

COMMENT

There is no administrative reason for these taxpayers who are owed $50,000 or less to have to wait for their refunds any longer than other taxpayers owed money by the BOE.

Senate Bill 948 (Committee on Governance and Finance) Chapter 352

Confidential Assessor Records – Tax Collector Access

Effective January 1, 2012. Among its provisions, amends Sections 408 of the Revenue and Taxation Code.

BILL SUMMARY

This bill, in part, allows the tax collector to obtain or access otherwise confidential information held by the county assessor.

Sponsor: California Treasurer and Tax Collector Association

LAW PRIOR TO AMENDMENT

Current law requires that assessors keep certain information confidential. Revenue and Taxation Code Section 408(a) contains the general confidentiality rule for county assessors and provides that homeowners' exemption claims and any information and records in the assessor's office that are *not required*[7] by law to be kept or prepared by the assessor are not to be open to public inspection. In addition, Sections 451 and 481 provide that all information requested by the assessor or furnished in the property statement and change in ownership information shall be "held secret" by the assessor.

Subdivision (b) of Section 408 provides an exception to the general rule of confidentiality for certain governmental agencies or representatives. It requires that the assessor disclose information, furnish abstracts, or permit access to all records in his or her office to those agencies or representatives specified.

AMENDMENT

Tax Collector Access. This bill adds subdivision (g) to Section 408 of the Revenue and Taxation Code to require the assessor to disclose information, furnish abstracts, or permit access to records in the assessor's office to the tax collector or his or her designated employee under specified conditions.

Conditions. Related to the access to confidential assessor records and information by the tax collector, this bill:

- Requires a written request for access to be made.
- Requires the tax collector or his or her designated employee to certify to the assessor, under penalty of perjury:

  (1) that the information is needed to assist with the preparation and enforcement of Part 6 (commencing with RTC Section 3351), and

  (2) that the information provided that is not public record and that is not open to public inspection shall not become public record and shall not be open to public inspection.
- Prohibits the assessor from disclosing social security numbers to the tax collector.

[7] There are only very limited records that are required to be kept by the assessor, such as the assessment roll and the list of property transfers.

Reimbursement. This bill requires the tax collector to reimburse the assessor for the actual and reasonable costs incurred in disclosing, furnishing, or permitting access to this information. In turn, the tax collector is to add any such costs charged by the assessor to the assessee's delinquent taxes as specified.

Legislative Findings and Declarations. This bill amends a section of law that imposes a limitation on the public's right of access to the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. As such, to demonstrate the interest protected by this limitation, and the need for protecting that interest, as required by Proposition 59 (2004), the following findings have been made:

> In order to protect the confidentiality of information relating to tax delinquencies with respect to the enforcement duties of the tax collector, as authorized by this act, it is in the state's interest to limit public access to this information.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the California Association of County Treasurer-Tax Collectors. It contains the Association's annual omnibus measure related to their property tax collection duties and its numerous provisions are intended to improve the administration of property tax laws.
2. **Maintaining Confidentiality.** This bill expressly requires that confidentiality be maintained by the tax collector. This is consistent with existing practices. Although not expressly provided in law, BOE staff has consistently opined that confidential records held by the county assessor disclosed to a person permitted access under Section 408 do not lose their status as confidential information. Thus, the tax collector (or any other person granted access via Section 408) would be bound by the same confidentiality standards required by law as the county in regards to maintaining the confidentiality of records. Any acquired documents that are confidential and privileged remain so as long as the privilege is not waived by the affected taxpayer.
3. **Related Legislation.** AB 563 (Furutani), which has been sent to the Governor, authorizes designated city employees to obtain or access otherwise confidential information from the county assessor when the city is conducting an investigation to determine whether the DTT should be imposed.

TABLE OF SECTIONS AFFECTED

SECTIONS		BILL NUMBER	CHAPTER NUMBER	SUBJECT
Revenue & Taxation Code				
§63.1	Amend	SB 947	Ch. 351	Parent-child exclusion
§69	Amend	SB 947	Ch. 351	Base year value transfer - Disaster
§69.3	Amend	SB 947	Ch. 351	Base year value transfer - Disaster
§69.5	Amend	SB 947	Ch. 351	Base year value transfer - Disaster
§73	Amend	ABx1 15	Ch. 3	Solar new construction exclusion
§74.5	Amend	SB 947	Ch. 351	Seismic safety new construction exclusion
§74.6	Amend	SB 947	Ch. 351	Disabled new construction exclusion
§75.23	Repeal	SB 947	Ch. 351	Supplemental assessments: Exemptions
§167	Amend	AB 711	Ch. 220	Burden of proof: Homeowners' Exemption
§205.5	Amend	AB 188	Ch. 202	Disabled veterans' exemption
§214.02	Amend	AB 703	Ch. 575	Welfare exemption – Natural Lands
§271.5	Add	SB 947	Ch. 351	Disabled veterans' exemption
§276.2	Amend	SB 947	Ch. 351	Disabled veterans' exemption
§278	Amend	SB 947	Ch. 351	Disabled veterans' exemption
§279	Amend	AB 188	Ch. 202	Disabled veterans' exemption
§402.1	Amend	SB 618	Ch. 596	Enforceable restrictions: Solar-use easements
§408	Amend	SB 948	Ch. 352	Assessor's records: Tax collector
§408.4	Add	AB 563	Ch. 320	Assessor's records: City employees
§480	Amend	SB 507	Ch. 708	Change in ownership statement
§480.1	Amend	SB 507	Ch. 708	LEOP Change in ownership statement

TABLE OF SECTIONS AFFECTED

SECTIONS		BILL NUMBER	CHAPTER NUMBER	SUBJECT
§480.2	Amend	SB 507	Ch. 708	LEOP Change in ownership statement
§482	Amend	SB 507	Ch. 708	Change in ownership statement penalty
§483	Amend	SB 507	Ch. 708	Change in ownership penalty appeals
§531.1	Amend	SB 947	Ch. 351	Escape assessments - Exemptions
§830	Amend	SB 947	Ch. 351	State assessee penalties
§862	Amend	SB 947	Ch. 351	State assessee penalties
§1150	Amend	SB 947	Ch. 351	"Certified aircraft" defined
§1154	Amend	SB 947	Ch. 351	"Air taxi" defined
§2821	Amend	SB 947	Ch. 351	Separate assessments
§4831	Amend	SB 947	Ch. 351	Decline in value: Floating and manufactured homes
§5303	Amend	SB 947	Ch. 351	"Aircraft" defined
§11551	Amend	SB 947	Ch. 351	Public record: refunds and cancellations
§11596	Amend	SB 947	Ch. 351	Public record: refunds and cancellations
Business and Professions Code				
§17533.6	Amend	AB 75	Ch. 269	Solicitations: General
§17537.9	Amend	AB 75	Ch. 269	Solicitations: Assessment appeals
Government Code				
§50281	Amend	AB 654	Ch. 278	Mills Act: Historical Property Inspections
Part 6.9 (§51190)	Add	SB 618	Ch. 596	Solar-use easements
§51255.1	Amend	SB 618	Ch. 596	Williamson Act cancellation: Solar-use easement