



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS**

Draft

Date Amended:	<b>6/20/07</b>	Bill No:	<b><u>SB 148</u></b>
Tax:	<b>Property</b>	Author:	<b>Hollingsworth, et al</b>
Related Bills:	<b>AB 297 (Maze) SB 114 (Florez)</b>	Position:	<b>Support - Fruit Trees provision</b>

**BILL SUMMARY**

This bill restarts the four-year exemption period for newly planted fruit and nut trees damaged by the January 2007 freeze that are currently in their exemption phase and allows taxpayers that lost at least 60% of their annual income due to the freeze to defer the December 10, 2007 property tax installment payment for one year without interest or penalty.

**SUMMARY OF AMENDMENTS**

The amendments since the previous analysis add an urgency clause to provide that the provisions of this bill will take immediate effect.

**ANALYSIS**

**CURRENT LAW**

**Fruit Trees.** Article XIII, Section 3(i) of the California Constitution exempts from property tax fruit and nut trees planted in orchard form until four years after the season first planted. The land upon which the trees are planted remains subject to tax. A similar exemption exists for grapevines, except that the exemption period is for three years.

Revenue and Taxation Code Section 211 restates the exemption provisions of the constitution and additionally provides that any tree severely damaged during the exemption period as a result of the December 1990 and December 1998 freezes restarts the exemption for another four years. Any tree pruned to the trunk or bud union to establish a new shoot as a replacement is considered “severely damaged.”

In addition to the exemption for newly planted orchards provided by Section 211, Property Tax Rule 131 provides that the four-year exemption period will also apply to individual trees when (1) a tree is newly planted within an existing orchard (i.e., a replacement tree) or (2) a tree that had reached commercial production requires grafting causing another non-producing period before it will bear fruit or nuts.

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

**Growing Crops are Exempt from Property Tax.** The State Constitution expressly exempts growing crops from property taxation (Article XIII, Section 3(h)). Consequently, since growing crops are not taxable property, the loss of growing crops, such as oranges or avocados, as a result of freezing conditions is not cause for general disaster relief under existing law. In order for orchards or vineyards to qualify for relief, the freeze must have damaged the trees or vines themselves.

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**Disaster Relief - Property Assessment Reductions.** Section 170 of the Revenue and Taxation Code provides that property taxes may be reduced following a governor declared disaster. Disaster relief is provided by allowing the county assessor, under specified conditions, to reassess the property as of the date of the disaster to recognize the loss in a property's market value. In the case of property other than homes, the loss in value to the property (land and improvements) must have been at least 20% of its fair market value. Since the freeze primarily affected crops, which are exempt from property tax, it is unlikely that any affected property (land and improvements) suffered a 20% loss in market value due to the January freeze.

**Disaster Relief - Property Tax Deferral.** Section 194.1 of the Revenue and Taxation Code allows those property owners who file a disaster claim for reassessment under Section 170 to also file a claim with the assessor to request deferment of payment of their next property tax installment. Specifically, if a disaster results in the issuance of a state of emergency proclamation by the Governor, affected property owners may have their next property tax installment payment deferred, without penalty or interest, until the assessor has completed the reassessment of the damaged property pursuant to the provisions of Section 170.

The first installment of property taxes is due on November 1 and becomes delinquent on December 10. (Sections 2605 and 2617) The second installment is due on February 1 and becomes delinquent on April 10. (Sections 2606 and 2618)

#### PROPOSED LAW

**Fruit Trees.** This bill would amend Section 211 to restart the four-year exemption period for trees that, while they were still in their exemption period, were so severely damaged by the January 2007 freeze that they required pruning to the trunk or bud union to establish a new shoot as a replacement for the damaged tree.

**Disaster Relief - Property Tax Deferral for Landowners that Suffered Crop Losses.** This bill would add Section 199 to the Revenue and Taxation Code to provide that local boards of supervisors may enact a temporary ordinance to authorize a qualified taxpayer to defer payment of their next property tax installment payment; specifically, the payment due on December 10, 2007. A taxpayer must request deferral on or before November 1, 2007 and must repay all of the amount postponed, without penalty or interest, by December 10, 2008.

A "qualified taxpayer" means a person or entity that is engaged in specified industry codes of the North American Industry Classification System Manual published by the United States Office of Management and Budget and that due to the January 2007 freeze suffered a revenue loss of 60 percent or more of the projected income of the person or entity for the 2007 calendar year. The industry classifications include those for oil seed farming, vegetable and melon farming, fruit and tree farming, greenhouse, nursery and floriculture production, and other crop farming.

To verify the revenue loss threshold is met, the application for deferral must include documentation, such as crop insurance data, shipping statements from packing houses, or copies of applications submitted to governmental entities documenting the disaster losses.

**IN GENERAL**

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

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

**BACKGROUND**

Similar legislation was enacted for two other severe freezes occurring in December of 1990 and 1998.

<b>Severe Freeze</b>	<b>Type</b>	<b>Bill Number</b>
December 1990	Trees & Grapevines	AB 1771 (Harvey) Stats. 1991, Ch. 1034
December 1998	Trees	SB 1014 (Poochigian) Stats. 1999, Ch. 291

AB 1771 added the provision starting a new exemption period for fruit or nut bearing trees or grapevines, damaged by the December 1990 freeze. AB 1771 was sponsored by the Kern County Assessor in an effort to provide relief to farmers who had vineyards and orchards still within the initial exemption period for newly planted vines and trees when the December 1990 freeze hit. There were 10 days of freezing temperatures in December of 1990 which resulted in tree losses in Kern, Tulare, and Fresno Counties.

SB 1014 was sponsored by the California Citrus Mutual. Grapevines were not included in this bill because they were not damaged by the 1998 freeze.

**COMMENTS**

1. **Sponsor and Purpose.** The author is sponsoring this measure in an effort to restart the exemption period for trees damaged by the January 2007 freeze and provide local counties with the option of providing additional temporary relief to affected taxpayers.
2. **The June 20 amendments** added an urgency clause to this bill. Without the urgency clause, the provisions of this bill would not become effective until January 1, 2008, a date after which the property taxes this bill proposes to defer becomes delinquent. The **May 25, 2007 amendments** added the provisions for property tax deferral for qualified taxpayers affected by the freeze. The **March 6, 2007 amendments** made a nonsubstantive change, corrected a spelling error, and added Senator Alquist as another coauthor.
3. **Proclamations.** In January 2007, the Governor issued four proclamations of a state of emergency for a total of 18 counties related to the severe freezing weather as follows:
  - January 16: Fresno, Kern, Kings, Madera, Merced, Monterey, San Luis Obispo, Santa Barbara, Tulare and Ventura counties
  - January 19: Imperial, San Bernardino, San Diego, Santa Clara, Riverside, and Yuba counties
  - January 20: Stanislaus County
  - January 26: El Dorado County
4. **Young Trees Killed by the Freeze Are Currently Exempt.** This bill would merely extend the exemption period for trees that are already exempt from tax. It follows the basic tax policy, that trees will not be subject to taxation until they reach maturity. In this situation where a young tree that is currently in its exemption period and which must be replaced due to the freeze, the replacement tree will be eligible for a full four year exemption period before it will become subject to property tax.
5. **Growing Crops Are Exempt.** This bill proposes to provide tax relief by deferring property taxes since the general types of property tax relief offered after a governor declared disaster is not effective or applicable in this situation. Because growing crops are not subject to tax, there is no property tax relief available if the crops are lost. However, if the trees themselves are damaged, then property tax reductions are possible. Specifically, Section 170 provides relief for damaged or destroyed taxable property, but to qualify the entire property must suffer at least a 20% reduction in its fair market value and this is unlikely.
6. **Related to Deferral, the Bill Does Not Expressly State to What County Department Applications Are to be Made.** Presumably, the application will be filed with the county assessor. Section 194.1, a similar provision that provides property tax deferral generally, specifies that the application is to be made to the assessor. Once approved, the county assessor in turn notifies the county auditor and county tax collector for appropriate action.
7. **Related Bills.** AB 297 (Maze) makes identical amendments related to trees and vines. SB 114 (Florez) enacts various disaster relief provisions related to the freeze, including local government backfill for property tax revenue losses associated with

assessment reductions due to the freeze under Section 170 and the retention of the homeowners' exemption on any home that may have been damaged.

### **COST ESTIMATE**

With respect to administration, the Board would incur insignificant costs in informing and advising local county assessors, the public, and staff of the law changes. These costs are estimated to be under \$10,000.

### **REVENUE ESTIMATE**

**Fruit Trees - Unknown, but likely minimal.** The long term tree damage is currently unknown. The extent of the permanent damage will not be known until after spring when new growth occurs. This bill applies to trees currently in their exemption period. Therefore, property tax revenue is not currently being realized from these trees.

Furthermore, trees currently subject to property tax that must be replaced are eligible for a new exemption period under existing law via Property Tax Rule 131. This rule also provides that a grafting of a tree that causes a re-occurrence of a nonproducing period makes the tree eligible for a new exemption period.

**Property Tax Deferral.** This bill merely postpones payment of taxes, without interest or penalty. These taxes will ultimately be collected. The state will neither be reimbursing local governments nor providing a bridge loan to any county that chooses to adopt the temporary ordinance to provide disaster assistance to persons impacted by the freeze. It is the county's option to offer deferral and in those counties, if any, the taxpayer's subsequent option to participate by making an application.

Analysis prepared by:	Rose Marie Kinnee	916-445-6777	6/22/07
Contact:	Margaret S. Shedd	916-322-2376	
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