



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

Date Amended:	06/20/06	Bill No:	SB 1400
Tax:	Property	Author:	Kehoe
Related Bills:	SB 451 (2004)		

BILL SUMMARY

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

Summary of Amendments

Since the previous analysis, the bill was amended with technical clarifications.

ANALYSIS

Current Law

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

Proposed Law

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

In General

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

Revenue and Taxation Code Section 107 sets forth the three essential elements that must exist to find that a person’s use of publicly-owned tax-exempt property rises to a level of a taxable possessory interest. The use must be independent, durable and exclusive.

Section 107(a)(1) defines "independent" to mean “the ability to exercise authority and exert control over the management or operation of the property or improvements, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the property or improvements. A possession or use is independent if the possession or operation of the property is sufficiently autonomous¹ to constitute more than a mere agency.”

¹Property Tax Rule 20 specifies that to be “sufficiently autonomous” to constitute more than a mere agency, the possessor must have the right and ability to exercise significant authority and control over the management or operation of the real property, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the real property.

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

In 2004, Senate Bill 451 (Ch. 853, Stats. 2004) added Section 107.4 to the Revenue and Taxation Code to provide that a possession or use of land or improvements is *not* independent if that possession or use is pursuant to a contract, including, but not limited to, a long-term lease, for the private construction, renovation, rehabilitation, replacement, management, or maintenance of housing for active duty military personnel and their dependents, if specific criteria are met. An interest that is not independent fails to meet one of the three necessary elements for the interest to be subject to property tax. Thus, a private contractor’s interest in military housing meeting the eligibility criteria would be exempt from property tax.

Background

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

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by San Diego County. Its purpose is to provide clarity as to the types of military housing eligible for the possessory interest exemption.
2. **The June 20** amendments change the definition of a “military facility under military control” to be a military base that restricts “*public access*” to the military base. **The June 13 amendments** change the definition of a “military base under military control” as a military base that restricts access “*onto the military base by*” the general public.
3. **San Diego has a number of privatized military housing projects, some of which are eligible for exemption under Section 107.4 and others which are not.** This bill seeks to expressly provide in statute that the housing be located on a military base in which public access to the military base is restricted.

COST ESTIMATE

The Board would incur insignificant costs (less than \$10,000) to inform and advise county assessors, the public, and staff of the change in law.

REVENUE ESTIMATE

This bill has no revenue impact.

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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.