



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

Date Introduced:	<b>12/04/00</b>	Bill No:	<b>SCA 1</b>
Tax:	<b>Property</b>	Author:	<b>McClintock</b>
Board Position:	<b>Neutral</b>	Related Bills:	<b>ACA 45 (1998) AB 1776 (1998) SB 1723 (1998) SB 2001 (1998)</b>

**BILL SUMMARY**

This bill would place a constitutional amendment before the voters to: 1) abolish the vehicle license fee or other tax in lieu of an ad valorem property tax; 2) exempt from property tax vehicles subject to registration under state law; and, 3) transfer sales tax funds to local governments to replace VLF funds.

**ANALYSIS**

**Current Law**

Generally, the only types of personal property owned by *individuals* which are subject to property tax are boats and aircraft. (Personal property when it is used in a trade or business, whether owned by an individual or a legal entity, is subject to property tax.) Section 3(m) of Article XIII of the California Constitution and Section 224 of the Revenue and Taxation Code exempt from property tax household furnishings and “personal effects” which are not held or used in connection with a trade, profession or business. Revenue and Taxation Code Section 224 excludes from the definition of “personal effects,” boats, aircraft, and vehicles. Consequently, these three types of personal property are potentially subject to property tax.

Despite the express language of Section 224, “vehicles,” in the common meaning of the term, i.e., passenger cars and trucks<sup>1</sup>, are not subject to property tax. This is because Revenue and Taxation Code Section 10758 provides that the vehicle license fee paid on passenger cars and trucks is in lieu of the property tax. If the vehicle license fee were abolished without modifying property tax law, then vehicles would technically become subject to property tax.

**Proposed Law**

This constitutional amendment would, subject to voter approval, add Article XXIII “Vehicle License Fee Elimination and Local Fiscal Relief” to the Constitution to provide that no vehicle license fee, or any other tax in lieu of an ad valorem property tax, may

<sup>1</sup> There are certain items which meet the definition of “vehicle” which are subject to property tax. This includes items such as farm and construction equipment.

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be imposed on any vehicle. To offset the vehicle license fee revenue loss to local governments, the proposed constitutional amendment would transfer state sales and use tax revenues from the Retail Sales Tax Fund to the Local Government Independence Fund, which this measure would create.

The proposed constitutional amendment would also add subdivision (s) to Section 3 of Article XIII of the Constitution to exempt from property taxation “any vehicle subject to registration under state law.”

### **In General**

**Vehicle License Fee (VLF).** Prior to January 1, 1936, the commencement of the vehicle license fee, vehicles were subject to property tax at the local level. The change in taxation methods stemmed from the inability to effectively assess and collect taxes on vehicles via the property tax. The problems included significant levels of tax evasion by taxpayers, relatively high administrative costs, and a lack of statewide uniformity in the values assigned to similar vehicles.

**Vehicles.** The Revenue and Taxation Code, with respect to property tax matters, does not define the term “vehicle” and the Board of Equalization has not promulgated a regulation defining it specifically for property tax purposes. Consequently, for administrative purposes, the definition of the term found in the Vehicle Code has been relied upon.

Section 670 of the Vehicle Code defines a vehicle as:

A "vehicle" is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

Section 415 of the Vehicle Code defines a “motor vehicle” as:

- (a) A "motor vehicle" is a vehicle that is self-propelled.
- (b) "Motor vehicle" does not include a self-propelled wheelchair, invalid tricycle, or motorized quadricycle when operated by a person who, by reason of physical disability, is otherwise unable to move about as a pedestrian.

The term “vehicle” has been broadly defined by both the statutory and case law. Court decisions have held that a device could be *illegal* to operate on the highway, but still meet the definition of a vehicle. For example, in *Lambert v. Southern Counties Gas Co.* (1959) 52 Cal. 2d 347, 351, the California Supreme Court held that a bulldozer was a vehicle. The court stated:

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For purposes of classification as a ‘motor vehicle’ under the broad definition of the Vehicle Code, it is not required that the device be one that may *legally* be “self-propelled upon a highway.”

Also, in *Travelers Indemnity Co. v. Colonial Ins. Co.* (1966) 242 Cal.App.2d 227, the court held that a forklift met the definition of a vehicle.

**Types of “Vehicles” Currently Subject To Property Tax.** Under current assessment practices, some items which meet the definition of “vehicle” are assessable as personal property subject to property tax. This includes:

- Implements of husbandry (Section 410-414; Vehicle Code Section 36000, 36005)
- Rubber tired equipment which must be moved or operated under permit issued pursuant to Vehicle Code Section 35780. (Section 994)
- Steel Wheeled and Track Laying Equipment (Section 994)
- Special Construction Equipment (Section 994, Vehicle Code Section 565)
- Special Mobile Equipment (Section 994, Vehicle Code Section 575)

Additionally, it has been suggested that certain farm, construction and other “commercial” equipment used at residences for non-business, personal use that meet the definition of “vehicle,” such as tractors, backhoes, bulldozers, forklifts, crawler loaders, golf carts, riding lawnmowers, and any other type of equipment that are self propelled or are designed to be moved by something other than “exclusively human power,” should be subject to property tax (LTA 94/44). A proposal to reverse this view was included in SB 657 (Ch. 494, Stats. 1995), a Property Tax Omnibus bill sponsored by the California Taxpayers’ Association (Cal Tax), but was deleted prior to the bill’s enactment.

### Background

Prior legislative measures designed to eliminate the vehicle license fee include:

- ACA 45 (1998, McClintock)
- AB 1776 (1998, McClintock), Statutory companion to ACA 45
- SB 1723 (1998, Haynes)
- SB 2001 (1998, Hurtt)

Additionally a constitutional initiative to abolish the VLF was circulated but failed to gather the necessary number of signatures for the March 2000 ballot.

### COMMENTS

1. **Sponsor and purpose.** The author, the sponsor of this measure, has been the leading proponent of eliminating the “car tax” in California. Senator McClintock’s website, <http://republican.sen.ca.gov/web/mcclintock/default.htm> contains a special “Repeal the Car Tax” section which contains numerous articles and papers

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prepared on this subject . According to these articles, the major reasons why the car tax should be abolished are as follows:

- The car tax is the last vestige of an abusive tax system. [The tax on personal effects was abolished, yet vehicles continue to be taxed.]
  - The car tax no longer bears any relationship to car-related services.
  - Abolishing the car tax simply restores the overall rate of taxation to the pre-1991 level.
  - The car tax is a tax on a necessity of life.
  - Californians bear one of the heaviest tax burdens per vehicle in the country.
  - California motorists are about to experience huge increases in SMOG II fees and costs.
  - California’s car tax provides a perverse incentive for motorists to [not] shed older higher-polluting vehicles for newer, less polluting ones.
  - California’s high car taxes have produced an array of tax avoidance efforts by people and businesses registering vehicles out of state.
- 2. **The provisions of Section 3 of the California Constitution are self-executing in the sense that no legislative enactment would be required to put it into effect.** The amendment would exempt from property tax “any vehicle subject to registration under state law.” This constitutional amendment is currently presented as a stand alone measure, without a companion statutory measure defining its terms.
- 3. **Property Tax Status Quo Intended?** Most discussions of this proposal are held in the context of eliminating the vehicle license fee applied to passenger cars and trucks. If this bill is intended to apply only to vehicles currently subject to the vehicle license fee, then this measure would have no practical effect with respect to property tax administration.
- 4. **The term “vehicle” has been broadly interpreted and some “vehicles” are subject to property tax.** While discussions have focused on cars and trucks subject to the VLF, the exact constitutional language could be interpreted to apply to more situations. The terms “vehicle,” “subject to,” “registration,” and “state law” are not defined. There is a benefit to broad constitutional language and more specific statutory language in that it is more easily modifiable as circumstances necessitate. If the constitutional amendment was approved by voters, the Legislature could at a later date provide statutory definitions for these terms. However, if enacted as a stand alone measure which is self executing, it is conceivable that some would interpret the constitutional amendment to exempt from property tax more items than those previously only subject to the VLF, which may or may not be the author’s intent. For example, it could be stated that tractors used in farming operations, which are currently subject to property tax, are “vehicles” and that their DMV “identification plates” is a form of “registration” required under state law. The author

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may wish to clarify his intent with respect to vehicles currently subject to property tax either with uncodified language or a companion statutory measure. This would help avoid, to the extent possible, the cost of future appeals and litigation over these issues.

5. **Effect of Constitutional Amendment.** The taxation of personal property is discretionary with the Legislature. Section 2 of Article XIII of the California Constitution provides that the Legislature, two-thirds of the membership in each house concurring, may classify personal property for differential taxation or exemption. Thus, the Legislature could exempt vehicles without a constitutional amendment. Using a constitutional amendment would prohibit future legislative action to make vehicles subject to property tax statutorily. The constitutional approach also addresses local government concerns over the loss of vehicle license fee revenue.
6. **Mobilehomes.** Manufactured homes are subject to either the VLF or the property tax, as the law provides. The author may wish to directly address the taxability of manufactured homes currently subject to the VLF.
7. **Off Highway Vehicles (OHV) subject to Off-Road Registration.** OHVs are vehicles such as racing motorcycles, trail bikes, mini bikes, dune buggies, all-terrain vehicles, jeeps and snowmobiles. These vehicles are operated exclusively off public roads and highways on lands that are open and accessible to the public. These items are subject to registration once every two years, but they are not subject to the VLF. Vehicle Code Section 38230 provides that the registration fee is in lieu of the property tax. Presumably, these items would continue to be property tax exempt, as “vehicles subject to the registration.”
8. **Vessels (Boats) Would Remain Subject to Property Tax.** This measure is limited to “vehicles” subject to state registration. Vessels are also subject to state registration. Generally, every sail-powered vessel over eight feet in length and every motor driven boat not registered by the U. S. Coast Guard that are using the waters or on the waters of the state are subject to *registration* with the Department of Motor Vehicles. However, since this proposal uses the term “vehicles,” vessels would remain subject to property tax.

### **COST ESTIMATE**

The Board would incur some minor absorbable costs to inform and advise local county assessors, the public, and staff if this constitutional amendment is approved by voters.

### **REVENUE ESTIMATE**

With respect to the property tax provisions of this bill, if it is intended to apply only to vehicles currently subject to the vehicle license fee, then this measure would have no revenue effect.

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