

Amend Revenue and Taxation Code Sections 61 and 5096 to (1) correct a renumbering error and (2) correct a cross reference error. (Technical – Maintenance of the Codes)

Source: Property and Special Taxes Department and Legal Department

Existing Law

Renumbering Error. Under existing property tax law, real property is reassessed to its current fair market value when there is a "change in ownership." Revenue and Taxation Code Section 61 lists specific situations considered to be a change in ownership.

Assembly Bill 3076 (Ch. 364, Stats. 2006) amended subdivision (c) of Section 61 to include floating homes in provisions related to the change in ownership consequences of manufactured homes located on rented or leased land. However, these amendments also mistakenly deleted the "(1)" which commenced the first sentence of subdivision (c). Apparently, it was deleted because it appeared to be a paragraph designation while the other two paragraphs within subdivision (c) were not numbered. However, the "(1)" was actually part of a numbered list within the first sentence of the first paragraph. As a result, this leaves the second number in the list ("(2)") floating in the first sentence which leads to technical impreciseness.

Cross Reference Error. Section 5096 outlines the parameters under which property taxes may be refunded. One provision concerns what happens when the property taxes paid exceeded the equalized value of the property under Section 1613. This means that when the assessed value of the property is reduced in an assessment appeal, a property tax refund will be issued.

Senate Bill 1063 (Stats. 2003, Ch. 199), in effect January 1, 2004, repealed Section 1613 and its provisions were amended into Section 1610.8. Thus, the cross reference in Section 5096 to Section 1613 is no longer correct.

This Proposal

Renumbering Error. This proposal would amend subdivision (c) of Section 61 to correct the renumbering error by adding paragraph and subparagraph designations to the previously undesignated text and making complete sentences for each provision. These amendments will correct the dangling "(2)" within the first sentence as well as improve the readability of this subdivision.

Cross Reference Error. This proposal would amend Section 5096 to correct the statutory cross reference to Section 1610.8.

Section 61 of the Revenue and Taxation Code is amended to read:

61. Except as otherwise provided in Section 62, change in ownership, as defined in Section 60, includes, but is not limited to:

(a) The creation, renewal, sublease, assignment, or other transfer of the right to produce or extract oil, gas, or other minerals regardless of the period during which the right may be exercised. The balance of the property, other than the mineral rights, shall not be reappraised pursuant to this section.

(b) The creation, renewal, extension, or assignment of a taxable possessory interest in tax exempt real property for any term. For purposes of this subdivision:

(1) "Renewal" and "extension" do not include the granting of an option to renew or extend an existing agreement pursuant to which the term of possession of the existing agreement would, upon exercise of the option, be lengthened, whether the option is granted in the original agreement or subsequent thereto.

(2) Any "renewal" or "extension" of a possessory interest during the reasonably anticipated term of possession used by the assessor to value that interest does not cause a change in ownership until the end of the reasonably anticipated term of possession used by the assessor to value that interest. At the end of the reasonably anticipated term of possession used by the assessor, a new base year value, based on a new reasonably anticipated term of possession, shall be established for the possessory interest.

(3) "Assignment" of a possessory interest means the transfer of all rights held by a transferor in a possessory interest.

~~(c)(1)(A)~~ The creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options),~~;~~

~~(B) The the~~ termination of a leasehold interest in taxable real property which had an original term of 35 years or more (including renewal options), ~~and~~

~~(C) Any-any~~ transfer of a leasehold interest having a remaining term of 35 years or more (including renewal options), ~~or~~

~~(D) (2) Any-any~~ transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of less than 35 years.

~~(2)~~ Only that portion of a property subject to that lease or transfer shall be considered to have undergone a change in ownership.

~~(3)~~ For the purpose of this subdivision, ~~for 1979-80 and each year thereafter,~~ it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than manufactured homes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800) and floating homes subject to taxation pursuant to Section 229, that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.

(d) (1) (A) A sublease of a taxable possessory interest in tax-exempt real property for a term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

(B) The termination of a sublease of a taxable possessory interest in tax-exempt property with an original term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

(C) Any transfer of a sublessee's interest with a remaining term, including renewal options, that exceeds half of the remaining term of the leasehold.

(2) Any transfer of a possessory interest in tax-exempt real property subject to a sublease with a remaining term, including renewal options, that does not exceed half the remaining term of the leasehold, including renewal options.

(e) The creation, transfer, or termination of any joint tenancy interest, except as provided in subdivision (f) of Section 62, and in Section 63 and Section 65.

(f) The creation, transfer, or termination of any tenancy-in-common interest, except as provided in subdivision (a) of Section 62 and in Section 63.

(g) Any vesting of the right to possession or enjoyment of a remainder or reversionary interest that occurs upon the termination of a life estate or other similar precedent property interest, except as provided in subdivision (d) of Section 62 and in Section 63.

(h) Any interests in real property that vest in persons other than the trustor (or, pursuant to Section 63, his or her spouse) when a revocable trust becomes irrevocable.

(i) The transfer of stock of a cooperative housing corporation, vested with legal title to real property that conveys to the transferee the exclusive right to occupancy and possession of that property, or a portion thereof. A "cooperative housing corporation" is a real estate development in which membership in the corporation, by stock ownership, is coupled with the exclusive right to possess a portion of the real property.

(j) The transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person.

Section 5096 of the Revenue and Taxation Code is amended to read:

5096. Any taxes paid before or after delinquency shall be refunded if they were:

(a) Paid more than once.

(b) Erroneously or illegally collected.

(c) Illegally assessed or levied.

(d) Paid on an assessment in excess of the ratio of assessed value to the full value of the property as provided in Section 401 by reason of the assessor's clerical error or excessive or improper assessments attributable to erroneous property information supplied by the assessee.

(e) Paid on an assessment of improvements when the improvements did not exist on the lien date.

(f) Paid on an assessment in excess of the equalized value of the property as determined pursuant to Section ~~4643~~ 1610.8 by the county board of equalization.