Draft

STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**07/17/07**	Bill No:	**AB 1020**
Tax:	**Property**	Author:	**S. Runner**
Related Bills:			

BILL SUMMARY

This bill would expressly state in law that a recordation of a certificate of sale on a foreclosed property, as specified, that is subject to a right of redemption, is not a change in ownership during the time period open to redemption.

SUMMARY OF AMENDMENTS

The amendments since the previous analysis move the provisions of this bill from Section 62 to Section 62.11, a new section of law.

ANALYSIS

CURRENT LAW

Change in Ownership. Under existing law, property is reassessed to its current fair market value after a "change in ownership." The reassessment is effective as of the date that the change in ownership occurs.

Revenue and Taxation Code Section 60 defines change in ownership to mean 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. Thus for a transfer to meet this definition it must have all three of the following characteristics:

- It transfers a present interest in real property.
- It transfers the beneficial use of the property.
- The property rights transferred are substantially equivalent in value to the fee interest.

Foreclosure. Related to the change in ownership consequences of property subject to foreclosure, existing law, via Property Tax Rule No. 462.120, provides:

(a) Mortgage or deed of trust foreclosed by **judicial action is a sufficient change in ownership only**:
  (1) **After the period of redemption has passed and property has not been redeemed**, or
  (2) Upon redemption when title vests in the original debtor's successor in interest.

(b) **Deed of trust foreclosed by trustee's sale shall cause a reappraisal as of the date the right of possession vests in the purchaser**.

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.

(c) A transfer by a trustor in lieu of a trustee's foreclosure sale constitutes a change in ownership.

Foreclosure may occur either as a result of a court action, known as a "judicial foreclosure" or without court action, often referred to as "nonjudicial foreclosure." A sale by a trustee, or "trustee's sale" is a nonjudicial foreclosure.

Certificates of Sale – Rights of Redemption. Section 729.040 of the Code of Civil Procedure requires a "certificate of sale" to be recorded with the county recorder when a person buys a property in foreclosure proceedings if the property is subject to the right of redemption. The information included on the certificate of sale depends upon whether it is a judicial foreclosure or a nonjudicial foreclosure.

Related to a property that was sold in a nonjudicial foreclosure initiated by a homeowners association of a common interest development for failure to pay homeowner's dues, Section 729.035 of the Code of Civil Procedure provides a right of redemption for such sales within 90 days after the sale.

PROPOSED LAW

This bill would add Section 62.11 to the Revenue and Taxation Code to provide that a change in ownership does not include "the recordation of a certificate of sale pursuant to subdivision (a) of Section 729.040 of the Code of Civil Procedure, relating to property sold subject to the right of redemption, for the period in which the right of redemption exists."

BACKGROUND

Recent legislation, SB 137 (Chapter 452, Stats. 2005) and AB 2624 (Chapter 575, Stats. 2006) changed the procedures for nonjudicial foreclosures related to delinquent homeowners' association dues. SB 137, in part, added Section 729.035 to the Code of Civil Procedure to provide a redemption period of 90 days. This provides the foreclosed upon property owner a right to redeem the property within 90 days of the foreclosure sale. AB 2624, in part, amended Section 729.040 to revise and recast its provisions that require certificates of sale to be recorded with the county recorder. The amendments require certain information to be included in the certificate of sale if it is a judicial foreclosure and other types of information to be included if it is a nonjudicial foreclosure.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the County Recorders Association of California to clarify that the recordation of a certificate of sale does not constitute a change in ownership for property tax purposes. The author's office notes that nothing in the law expressly exempts "certificates of sale" from change in ownership and that logically the change in ownership does not occur until after the foreclosure sale, when the redemption period expires and the trustee records a trustee's deed, perfecting the purchaser's title to the property. In addition, it is intended to create uniformity in the document transfer tax administered by county recorders by ensuring that tax is collected when the trustees deed on a foreclosed

property is recorded. According to the author, this bill will prevent property owners from making unnecessary payments and County Recorders from making unnecessary refunds.

2. **The July 17 amendments** move the provisions of this bill from Section 62 to a new, stand-alone section to avoid any chaptering out issues or the need for double joining provisions as other bills this session also propose to amend Section 62.
3. **This bill expressly states in the Revenue and Taxation Code that the recordation of a certificate of sale, as specified, is not a change in ownership.** This is consistent with existing laws and regulations.

COST ESTIMATE

The Board would incur some insignificant absorbable costs in informing and advising local county assessors, the public, and staff of the law changes as well as addressing ongoing implementation questions and issues.

REVENUE ESTIMATE

This bill has no revenue impact.

Analysis prepared by:	Rose Marie Kinnee	916-445-6777	07/23/07
Contact:	Margaret S. Shedd	916-322-2376	

1020-2rk.doc

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.