STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended:	**Enrolled**	Bill No:	**SB 559**
Tax:	**Property**	Author:	**Kehoe**
Related Bills:		Position:	**Support**

BILL SUMMARY

This bill would provide a retrospective change in ownership exclusion for any transfer of property between registered domestic partners occurring between January 1, 2000 and January 1, 2006.

ANALYSIS

CURRENT LAW

Under existing property tax law, real property is reassessed to its current fair market value whenever there is a "change in ownership." (*Article XIIIA, Sec. 2; Revenue and Taxation Code Sections 60 - 69.7)*

Since January 1, 2006, subdivision (p) of Section 62 of the Revenue and Taxation Code has provided that change in ownership does not include any transfer on or after January 1, 2006, between registered domestic partners, as defined in Section 297 of the Family Code. It also details the more common transfers of property interests between registered domestic partners such as those resulting from death, dissolution of a registered domestic partnership, and creation of a trust.

Prior to January 1, 2006 and the addition of subdivision (p) to Section 62, a transfer of property between registered domestic partners was generally considered a change in ownership triggering reassessment of that property. However, there are a few exceptions, expressly provided in an administrative regulation which was amended on November 13, 2003. Specifically:

- Property Tax Rule 462.040 provides, generally, that in the case where property is owned by persons, such as registered domestic partners, in the form of a "joint tenancy," then transfers of joint tenancy interests between these co-owners, under specified conditions, may not constitute a change in ownership.
- Property Tax Rule 462.240(k) provides that any transfer of separate property inherited by a surviving domestic partner by intestate succession upon the death of a registered domestic partner does not constitute a change in ownership.

PROPOSED LAW

Reassessment Reversal. This bill would amend subdivision (p) of Section 62 to provide that any transferee whose property was reassessed between January 1, 2000 and January 1, 2006 in contravention of the provisions of the change in ownership exclusion for registered domestic partners may obtain a reversal of that reassessment.

Eligibility Requirements. To be eligible for a reassessment reversal, the property owner must have been in a registered domestic partnership as of the date of the transfer that caused the reassessment trigger.

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.

Claim Must be Filed by June 30, 2009. To receive a reversal of the reassessment, a property owner must file a claim form with the assessor by June 30, 2009. Claims must include a copy of the "Certificate of Registered Domestic Partnership" issued by the Secretary of State. Additionally, the claimant must attest that the information provided on the form is true, correct, and complete to the best of his or her knowledge and belief. The Board of Equalization would be required to prescribe the claim form, which would be called the "Claim for Reassessment Reversal for Registered Domestic Partners."

Application Fee. The county may charge a fee to recoup its costs related to processing the application and reversing the prior reassessment in an amount that does not exceed the actual costs incurred.

Effective Date of Reversal. The reassessment reversal granted pursuant to a claim applies commencing with the lien date of the assessment year in which the claim is filed.

No Property Tax Refunds for Prior Years. This bill expressly provides that property tax refunds will not be made for any prior assessment year.

IN GENERAL

Property Tax System. California's system of property taxation values property at its 1975 fair market value, with annual increases limited to the inflation rate, as measured by the California Consumer Price Index, or 2%, whichever is less, until the property changes ownership or is newly constructed. At the time of the ownership change or completion of new construction, the value of the property for property tax purposes is redetermined based on current market value. The value initially established, or redetermined where appropriate, is referred to as the "base year value." Thereafter, the base year value is subject to annual increases for inflation. This value is referred to as the "factored base year value." This system results in substantial property tax savings for long term property owners.

Proposition 13. Proposition 13 was an initiative approved by voters on June 6, 1978 adding Article XIII A to the California Constitution, and established a new system of property taxation as described above. The initiative only contained about 400 words. Related to this bill, subdivision (a) of Section 2 of the initiative provided:

> "The full cash value means the County Assessors valuation of real property as shown on the 1975-76 tax bill under 'full cash value', or thereafter, the appraised value of real property when **purchased,** newly constructed, **or a change in ownership has occurred** after the 1975 assessment. All real property not already assessed up to the 1975-76 tax levels may be reassessed to reflect that valuation." *(Emphasis added.)*

The initiative did not define "change in ownership" within its text. The ballot pamphlet did not define, nor did it discuss, the term "change in ownership." The only reference in the ballot pamphlet to the "change in ownership" concept is found in the Analysis of the Legislative Analyst. The Legislative Analyst states:

> "For property which is <u>sold</u> or newly constructed after March 1, 1975, the assessed value would be set at the appraised (or market) value at the time of <u>sale</u> or construction." (Emphasis added.)

Because, the language of the initiative failed to define this integral element, it fell to the Legislature to determine what constitutes a “change in ownership” and to define the term through legislation. Consequently, the statutory scheme defining "change in ownership" enacted after Proposition 13 was done so without specific constitutional mandate or authorization.

Task Force on Property Administration. Following the passage of Proposition 13, the Assembly Revenue and Taxation Committee appointed a task force to study existing property tax statutes in light of Proposition 13, and to recommend the appropriate changes to the Revenue and Taxation Code in light of the ambiguities of Proposition 13. The Task Force was a broad based 35-member panel that included legislative and Board staff, county assessors, attorneys in the public and private sectors, and trade associations. The Task Force issued its "Report of the Task Force on Property Tax Administration" to the Assembly Revenue and Taxation Committee on January 22, 1979.

Defining Change in Ownership. In defining change in ownership, the Task Force’s goal was to distill the basic characteristics of a “change in ownership” and embody them in a single test, which could be applied evenhandedly to distinguish between “changes” and “non-changes.” It ultimately concluded that a change in ownership is a transfer which has 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.

The Legislature adopted this definition in Revenue and Taxation Code Section 60. Following the recommendation of the Task Force, the Legislature also included specific examples in Section 61 of transfers constituting a change in ownership and specific examples in Section 62 of transfers not constituting a change in ownership. In addition, Section 63, which sets forth the interspousal exclusion, was included in the original statutory scheme, prior to inclusion of the interspousal exclusion in the California Constitution via Proposition 58 in 1986. The Task Force recognized that transfers between spouses satisfied the three elements for a change in ownership, but chose to specifically exclude these transfers from change in ownership anyway. The Task Force stated in its Report that it saw no reason to exclude some interspousal transfers, such as transfers involving joint tenancy or community property, but not other transfers, such as a transfer of separate property between spouses.

BACKGROUND

Change in Ownership Exclusions. As previously stated, the term “change in ownership” was not defined by Proposition 13. Certain definitional “exclusions,” including the interspousal exclusion, were embodied in the initial statutory definitions necessary to implement Proposition 13’s change in ownership provisions. Thereafter, four other exclusions were statutorily provided as noted below.

BILL	YEAR	CHANGE IN OWNERSHIP EXCLUSION	R&T CODE
AB 1488	1979, Ch. 242	Numerous definitional exclusions • Change in method of holding title • Perfecting title • Security interests • Certain trusts • Retained life estates • Certain joint tenancies • Certain leases	§62 (a) – (g)
AB 1488	1979, Ch. 242	Interspousal Transfers – including marriage dissolutions (subsequently amended into Constitution via Prop. 58)	§63
AB 2718	1982, Ch. 911	Parent to Minor Child Upon Death of Parent - Residence	§62(m)
AB 2890	1984, Ch. 1010	Parent to Disabled Child - Residence	§62(n)
AB 2240	1984, Ch. 1692	Purchases of Mobilehome Parks by Residents	§62.1, §62.2
SB 565	2005, Ch. 416	Registered Domestic Partners	§62(p)

Since Proposition 13, the Constitution has been amended twice to provide for additional change in ownership exclusions for certain family transfers. These transfers will not trigger a reassessment of the property to current fair market value. Instead, the property retains its prior base year value.

PROP.	ELECTION	CHANGE IN OWNERSHIP EXCLUSION	R&T CODE
58	Nov. 6, 1986	• Parent-Child • **Interspousal: But, <u>statutorily</u> provided since 1979**	§63, §63.1
193	March 26, 1986	Grandparent–Grandchild	§63.1

Other constitutional amendments have been approved by voters permitting a person to "transfer" his or her Proposition 13 base year value from one property to another property, thereby avoiding reappraisal of the newly purchased property to its fair market value. In essence, this is another form of a change in ownership exclusion. Those constitutional amendments include:

PROP.	ELECTION	BASE YEAR VALUE TRANSFERS	R&T CODE
3	June 8, 1982	Replacement Property After Government Acquisition	§68
50	June 3, 1986	Replacement Property After Disaster	§69
60	Nov. 6, 1986	Persons Over 55 - Intracounty	§69.5
90	Nov. 8, 1988	Persons Over 55 - Intercounty	§69.5
110	June 5, 1990	Disabled Persons	§69.5
1	Nov. 3, 1998	Contaminated Property	§69.4

Similar legislation previously before the Legislature, but not enacted, to exclude certain transfers from change in ownership, either through constitutional amendment or statutory amendment, include:

BILL	YEAR	CHANGE IN OWNERSHIP EXCLUSION
SCA 9	2002	Transfers of principal place of residence between co-owners who resided together for three years - County optional.
SCA 5	2003	Transfers of principal place of residence between co-owners who resided together for three years - County optional.
AB 205	2003	As introduced, stated that California has no legitimate state interest in denying rights related to tax laws, including, "nonreassessment of real property upon a spouse's death" to registered domestic partners.
AB 23	2003	Modified joint tenancy exclusions.

Therefore, as detailed in the tables above, some change in ownership exclusions are contained in statute, while others are contained in the Constitution. Additionally, it should be noted that in specific instances where the same person continues to own or reside in the property these exclusions have been statutorily authorized. For example, instances such as the interspousal exclusion, placing property in a trust, creating a life estate, or purchasing the land under one's mobilehome.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by Equality California. Its purpose is to provide property tax relief to affected property owners who had their property reassessed because their partner died or their relationship ended. The bill also includes detailed legislative findings and declarations as to its purpose.

2. **Key Amendments.** The **July 9 amendments** authorized the county to charge a fee for its costs related to the application and reassessment reversal. The **June 27 amendments** (1) corrected a chapter bill number in the legislative findings and declarations portion of the bill, (2) add a specific cross reference to the statutory definition of "assessment year," and (3) expressly state that to receive a reassessment reversal the parties must have registered as domestic partners on or before the date of the transfer that triggered the initial reassessment.

3. **California's Domestic Partners Registry became effective on January 1, 2000.** Persons eligible to register with the Secretary of State as domestic partners include persons of the same sex in a committed relationship, as well as committed opposite-sex relationships where one partner is 62 years or older, that share a common residence.

4. **Current law provides a change in ownership exclusion for registered domestic partners.** Beginning on January 1, 2006, transfers of property between registered domestic partners no longer trigger a reassessment of property as provided in Revenue and Taxation Code Section 62(p).

5. **This bill would reverse any reassessment of a property due to a transfer of interests between registered domestic partners that occurred after the creation of the Registry but before the change in ownership exclusion of Section 62(p).** Generally, transfers of real property between co-owners with equal ownership in the property are subject to either a 0%, 50% or 100% reappraisal to fair market value as of the date of the transfer. In these instances, the date of the transfer would typically have been the date of a partner's death or termination of a partnership. The percentage of the property subject to reappraisal would have

depended upon how the property was held and the manner in which the co-owner was added to the title of the home. Under this bill, any reappraisal that occurred would be reversed on a prospective basis.

6. **Restores Proposition 13 protected value.** Property owners would continue to pay the same amount of property taxes on their property as they did prior to the reassessment (plus any inflationary increases) thereby restoring the property's Proposition 13 protected value which had previously been lost.
7. **Affected taxpayers must take action by June 30, 2009 by filing a claim with the local county assessor.** The reversal would not be automatic.
8. **The provisions of this bill are similar to other retrospective change in ownership exclusions where reassessments have been reversed on a prospective basis.** Specifically, Section 62(j) provides for transfers between co-owners occurring between 1975 and 1981 and Section 62(n) for transfers between parents and disabled children occurring between 1975 and 1984.

COST ESTIMATE

The Board would incur some minor absorbable costs in informing local county assessors, the public, and staff of the law changes and prescribing the required claim form.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Estimate of personal residences. The Secretary of State is the primary source for tracking registered domestic partnerships (RDP) in California. Through December 2005, there were 35,474 registered domestic partnerships. The estimated number of households as of January 1, 2006, was 12.2 million. RDPs comprised 0.291 percent of all households in California as of that same date. Based on reports from county assessors, there were more than 5.4 million properties receiving the homeowners' exemption in 2005. Therefore as of January 1, 2006, the number of owner-occupied residences owned by RDPs is estimated to be:

0.291% x 5.4 million = 15,714

The average assessed value of properties receiving the homeowners' exemption in 2005 was $234,151. The 2005 median home price according to the California Association of Realtors was $524,020. The estimated amount of assessed value difference per home is then [$524,020 - $234,151], or $289,869. The maximum total amount of affected value can be computed by multiplying the estimated number of RDP residences by the assessed value difference:

15,714 x $289,869 = $4.56 billion

Generally, before January 1, 2006, transfers of real property between RDP co-owners were treated the same as any other co-ownership transfers. That property was subject to either a 0%, 50% or 100% reappraisal to fair market value as of the date of the transfer. Assuming that these transfers would result, on average, in a 50 percent reappraisal, the total amount of affected value for the years of this estimate is then:

$4.56 billion x 50% = $2.28 billion

Assuming a 4 percent annual rate of transfer, the estimated difference in assessed value for transfers of the personal residence between registered domestic partners for the years 2000-2005 is:

$2.28 billion x 4% = $91.2 million

Estimate of other property types. It is difficult to estimate the impact on transfers of property other than the primary residence that would be affected under this billl. Assuming there are 50 transfers of such property between RDPs statewide, and further assuming the average assessed value of those properties amounted to $10 million for years 2000-2005, and applying an average reappraisal rate of 50%:

$10 million x 50 transfers x 50% = $250 million

If we further adjust that figure to exclude transfers upon death, we calculate:

$250 million x 80% = $200 million

The estimated difference in assessed value for transfers of property other than the personal residence of RDPs for the years 2000-2005 is $200 million.

REVENUE SUMMARY

The estimated revenue impact to exclude from the definition of change of ownership any transfer of property between registered domestic partners on or after January 1, 2000 and before January 1, 2006 is:

Personal Residence	$91.2 million x 1% =	$912,000
Other Property	$200 million x 1% =	$2,000,000
Total		$2,912,000

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