

Amend Government Code Section 51203 to correct the Revenue and Taxation Code reference and Government Code Section 51283 to require that property owners be notified of the cancellation value.

Source: Property and Special Taxes Department and Legal Department

Under current law, Sections 51280 through 51285 of the Government Code (known collectively as Article 5 of Chapter 7 of the Government Code) govern the cancellation of open-space contracts. These open-space contracts, which restrict the property to certain uses, allow the property owner to receive property tax relief. Government Code Section 51283 requires the county assessor to determine a "cancellation value" of the land for the purpose of determining a cancellation fee. In accordance with current law, the cancellation value is the current fair market value of the land as if unrestricted. The cancellation fee will be an amount equal to 12 1/2 percent of the current fair market value. Government Code Section 51240 allows cities and counties to include in their open-space contracts restrictions, terms, and conditions, including payments and fees, that are more restrictive than those set forth in governing statutes. The county assessor must certify this cancellation value to the board or council so that the cancellation fee can be determined. Government Code Section 51203 provides that the fair market valuation referenced in Section 51283 may be appealed pursuant to Revenue and Taxation Code Section 1604.

Due to subsequent renumbering of sections of the Revenue and Taxation Code, what was once Revenue and Taxation Code Sections 1604 and 1604.1 is now Revenue and Taxation Code Section 1605. Section 1605 provides that the property owner has 60 days from the "date of notice" to appeal the value.

However, Government Code Section 51283 does not require that the property owner receive a "notice" of the cancellation value. Thus, clerks of county assessment appeals boards, county assessors, and taxpayers are unsure of when the 60-day appeals period provided for in Section 1605 begins. Since the county assessor determines the cancellation value and certifies this value to the board of supervisors or city council, it makes sense that the assessor also notify the property owner of this value at the time the value is certified to the board or council so that if the property owner disagrees it can be appealed prior to the board or council setting the fee.

In order to clarify existing statutes, this proposal would: (1) amend Government Code Section 51203 to reference Revenue and Taxation Code Section 1605 rather than 1604; and (2) amend Government Code Section 51283(a) to require assessors to notify property owners of the cancellation value and their right to appeal that value within 60 days of the date of the notice or postmark date, whichever is later.

Section 51203 of the Government Code is amended to read:

The current fair market valuations referred to in Section 51283, upon the request of either of the parties to the contract, shall be subject to appeal to the county board pursuant to Section 4604 1605 of the Revenue and Taxation Code.

Section 51283 of the Government Code is amended to read:

(a) Prior to any action by the board or council giving tentative approval to the cancellation of any contract, the county assessor of the county in which the land is located shall determine the current fair market value of the land as though it were free of the contractual restriction. The assessor shall certify to the board or council the cancellation valuation of the land for the purpose of determining the cancellation fee. At the same time, the assessor shall send a notice to the assessee indicating the current fair market value of the land as though it were free of the contractual restriction. The notice shall advise the assessee of the right to appeal the fair market value of the land under Revenue and Taxation Code Section 1605 and that the appeal shall be filed within 60 days of the date of mailing printed on the notice or the postmark date therefor, whichever is later.

(b) Prior to giving tentative approval to the cancellation of any contract, the board or council shall determine and certify to the county auditor the amount of the cancellation fee which the landowner shall pay the county treasurer upon cancellation. That fee shall be an amount equal to 121/2 percent of the cancellation valuation of the property.

(c) If it finds that it is in the public interest to do so, the board or council may waive any payment or any portion of a payment by the landowner, or may extend the time for making the payment or a portion of the payment contingent upon the future use made of the land and its economic return to the landowner for a period of time not to exceed the unexpired period of the contract, had it not been canceled, if all of the following occur:

(1) The cancellation is caused by an involuntary transfer or change in the use which may be made of the land and the land is not immediately suitable, nor will be immediately used, for a purpose which produces a greater economic return to the owner.

(2) The board or council has determined that it is in the best interests of the program to conserve agricultural land use that the payment be either deferred or is not required.

(3) The waiver or extension of time is approved by the Secretary of the Resources Agency. The secretary shall approve a waiver or extension of time if the secretary finds that the granting of the waiver or extension of time by the board or council is consistent with the policies of this chapter and that the board or council complied with this article. In evaluating a request for a waiver or extension of time, the secretary shall review the findings of the board or council, the evidence in the

record of the board or council, and any other evidence the secretary may receive concerning the cancellation, waiver, or extension of time.

(d) The first nine hundred eighty-five thousand dollars (\$985,000) of revenue paid to the Controller pursuant to subdivision (e) in the 1992–93 fiscal year, and any other amount as approved in the final Budget Act for each fiscal year thereafter, shall be deposited in the Soil Conservation Fund, which is continued in existence. The money in the fund is available, when appropriated by the Legislature, for the support of both of the following:

(1) The total cost of the farmlands mapping and monitoring program of the Department of Conservation pursuant to Section 65570.

(2) The soil conservation program identified in Section 614 of the Public Resources Code.

(e) When cancellation fees required by this section are collected, they shall be transmitted by the county treasurer to the Controller and deposited in the General Fund, except as provided in subdivision (d). The funds collected by the county treasurer with respect to each cancellation of a contract shall be transmitted to the Controller within 30 days of the execution of a certificate of cancellation of contract by the board or council, as specified in subdivision (b) of Section 51283.4.

(f) It is the intent of the Legislature that fees paid to cancel a contract do not constitute taxes but are payments that, when made, provide a private benefit that tends to increase the value of the property.