California State Board of Equalization
Property Tax Department

LEGISLATIVE BULLETIN

State Capitol Building (from the East) c.1945
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PROPERTY TAX LEGISLATION
2017

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Assembly Bill 115 (Committee on Budget), Chapter 20
Affordable Sales Program

Effective June 27, 2017.
Among its provisions, adds section 54238.8 to the Government Code.

Summary: Requires California Department of Transportation (Caltrans)-owned homes in Los Angeles County sold under the State Route 710 Affordable Sales Program to specified buyers to be assessed at the sales price paid.

Purpose: To authorize the assessor to use the sales price to value these homes and make the home more affordable for existing tenants.

Fiscal Impact Summary: Indeterminable.

Existing Law: Purchase price presumption. Existing law requires the assessor to assess property at its fair market value when sold (i.e., a "change in ownership"). The law provides a rebuttable presumption that the purchase price paid in the transaction is the property's "fair market value" if the sale was an open market transaction, as specified.[1]

Enforceable restrictions. When determining fair market value, the law requires the assessor to factor in the negative impact of government-imposed use restrictions and resale restrictions that limit equity.[2] Additionally, the law bars the assessor from using the comparable sales of other properties to determine market value unless those properties are subject to similar limitations.[3]

Roberti Act.[4] Existing law and regulations require Caltrans to sell certain surplus residential property related to the State Route (SR) 710 corridor. Under the law, Caltrans must offer these properties for sale to potential buyers in a prioritized order at a specified price that depends on the buyer.

Relevant to this bill, income-qualified residents who live in SR 710 homes can buy the home at a specified "affordable price." Public or private affordable housing-related entities that will use these properties for affordable housing can buy at a specified "reasonable price." Housing sold at these prices is subject to use and resale restrictions imposed by Caltrans.

The selling price for these properties will vary as follows:

- **Affordable price buyers.** An affordable price means the maximum price at which the housing cost paid by the buyer does not exceed affordable costs for that buyer. (Gov.

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[1] Revenue and Taxation Code (RTC) §110(b).
[2] RTC Section 110(a) and RTC §402.1(a).
[3] RTC § 402.5.
[4] Gov. Code, §§ 54235 – 54238.7 [Surplus Residential Property, known as the "Roberti Act"]; Cal. Code Regs., tit. 21, §§ 1475-1491 [Affordable Sales Program].

Code, §54236(b); 21 CCR §1476(b).) Low or moderate income[5] tenant-occupants who have lived in the home for 2 or more years qualify. Income limits are raised to no more than 150% of area median income for tenants who lived in the home for 5 or more years. (Gov. Code, §54237; 21 CCR §1476(a)(3).) For lower income buyers, the price shall not exceed a monthly payment price in accordance with Section 8 of the US Housing Act of 1937. (Gov. Code 54236; 21 CCR §1476(b).)

- **Reasonable price buyers.** A reasonable price means the price that is best suited to the economically feasible use of the property as decent, safe, and sanitary housing at affordable rents and affordable prices. Affordable housing entities that will make the housing affordable to present tenants and households of low or moderate income qualify. If feasible, the entity must first rehabilitate and develop the property as limited-equity cooperative housing offered for sale to existing tenants. Otherwise, the entity must use the property for low and moderate rental or owner-occupied housing. (See Gov. Code, §54237(d).)
- **Fair market value: Other priority buyers:** A licensed appraiser will determine fair market value in accordance with the Uniform Standards of Professional Appraisal Practice. Caltrans will review and approve the appraiser's value determination. (21 CCR §1476(j).) Current tenants who once owned the property, current income-qualified tenants who prefer to buy without any use or resale restrictions, current non-income qualified tenants, and former tenants qualify. (Gov. Code, §54237.)
- **Auction price: Non-priority buyers.** Properties not purchased by persons or entities given priority-purchase rights would be offered at auction.

The Legislature has issued findings and declarations that selling these properties serve an important public purpose to preserve, upgrade, and expand the housing supply available to persons and families of low and moderate income. (Gov. Code, § 54235.)

Amended Law: This bill requires the assessor to use the purchase price paid to establish a property's new base year value after a change in ownership of any surplus residential property sold at an "affordable price" or "reasonable price" pursuant to the Roberti Act and related regulations. These provisions only apply to surplus residential properties for State Route 710 in Los Angeles County.

This bill is effective immediately.

In General: Fair Market Value of Enforceably Restricted Property. Existing law requires the assessor to reassess property to its fair market value when sold (i.e., "change in ownership"). The law provides that the property's "purchase price" is rebuttably presumed to be its "fair market value."[6] It also provides that "purchase price" means the total consideration provided by the purchaser or on the purchaser's behalf, valued in money, whether paid in money or otherwise.

[5] As defined in Health and Safety Code §50093.
[6] RTC §110(b).

After determining the purchase price paid, the law requires the assessor to consider the effect of any government-imposed restrictions and certain restrictions imposed by non-profit organizations. Specifically, the assessor exercises his or her judgment under RTC Section 402.1 to determine whether the property's value is equal to, or more or less than, the purchase price as a result of enforceable restrictions.

Non-profit Imposed Restrictions. In the case of non-profit-organization imposed restrictions, the law limits the assessor's ability to factor in its value impact. The law allows the assessor to consider these restrictions on:

- Homes on land with a 30-year use restriction as owner-occupied housing available at affordable cost that are sold at cost to low income families by qualifying nonprofit organizations[7] with no-interest financing when part of the mortgage is forgivable (i.e., "silent seconds").[8]
- Homes sold to low and moderate income buyers sited on leased land from a non-profit Community Land Trust with resale price restrictions that limit equity.[9]

Background. The Senate Transportation and Housing Committee's legislative analysis of this bill explains the history of SR-710 properties:

> For decades, Caltrans has proposed extending SR 710 to close a roughly 4.5 mile unconstructed gap in the freeway between SR 10 in Los Angeles and SR 710 in Pasadena. This gap affects the cities of Alhambra, Pasadena, South Pasadena, and a portion of Los Angeles. The project has been in the planning stage since 1953 for a variety of reasons related to the federal environmental review process. Caltrans currently owns over 460 homes within the original surface route corridor, 97 of which are declared to be of federal or state historical significance. More than 400 homes are occupied by tenants for whom Caltrans serves as landlord.

Commentary:

1. **Effect of bill.** This bill allows the assessor to set the value of these specified properties at purchase price if sold at the statutorily required "affordable" or "reasonable" price. This bill relieves the assessor of the requirement to undertake an analysis of a nominal sales price paid that appears below market value. Such analysis requires exercising independent appraisal judgment to estimate the property's market value, taking into consideration use and resale restrictions that limit equity. This value is compared to the nominal sales price paid, and the assessor must decide whether to accept, reject, or modify the nominal sales price. This task is further complicated because the law generally requires the assessor to disregard other homes sold in the area that are not similarly restricted when using the comparable sales approach to value.

[7] RTC §214.15. Added in 1999 by AB 1559.
[8] RTC §402.1(a)(10). Added in 2015. Health and Safety Code (HSC) §50052.5 defines "affordable housing cost."
[9] RTC §402.1(a)(11). Added in 2016.

2. **Affordability and Certainty.** The author states many of the SR 710 homes and properties always were intended to be sold to existing tenants at an affordable price. This bill furthers that purpose by ensuring that the associated property taxes are affordable as well as allowing the assessor to expeditiously handle these home sales. Property tax certainty allows prospective homebuyers to more accurately budget the property tax obligations they will incur when evaluating the cost of homeownership.

3. **These homes have use and resale restrictions that limit equity.** Caltrans adopted Regulations 1475 through 1491 of Title 21 of the California Code of Regulations, which detail use and resale restrictions. These government imposed restrictions will be recorded against the property.

4. **For-sale affordable housing administrative challenges.** In recent years, administering the property tax on below-market home sales made available through government and non-profit affordable housing programs has become increasingly complex. As explained previously, existing law is not designed to efficiently address the assessment of these homes. Strategies to create affordable housing stock for sale to households of low and moderate income continuously evolve, resulting in new fact patterns. Consequently, the assessor must expend limited resources to delve into the contractual enforceable restrictions of each program on a case-by-case basis.

5. **Purchase-price based assessments.** Affordable housing proponents generally advocate for purchase-price based property tax assessments to improve affordability and provide tax certainty. However, the overarching legal requirement to assess property at fair market value after a change in ownership constrains the assessor's ability to assess these properties at the below-market purchase price without further analysis. Purchase price based assessments are administratively expedient, but layers of law complicate assessment.

6. **Legislative and BOE response.** In the last two years, legislation[10] has been enacted to allow assessors to consider the negative value impact of certain non-profit imposed enforceable restrictions when setting assessed value. Additionally, the BOE issued a legal opinion outlining an assessment approach for homes purchased with silent second mortgages through government-related programs. Due to its complexity, for-sale affordable housing property tax assessments will likely continue to pose practical administrative challenges prompting further legislation.

7. **Prior BOE related Roberti Act Guidance.** In 1981, the BOE issued Letter to Assessors 81/74 related to the Roberti Act. The BOE reviewed the *Right to Purchase Agreement Between Caltrans and Buyer* under consideration at that time and concluded that these properties should be assessed at purchase price.

[10] In 2016, AB 2818 and in 2015, AB 668.

Assembly Bill 465 (Ting), Chapter 313
Urban Agricultural Incentive Zone

Effective January 1, 2018.
Amends Section 51042 of the Government Code.

Summary: Extends the sunset date for entering into an Urban Agricultural Incentive Zone Act contract from 2019 to 2029 and applies property size and use requirements to contiguous parcels under contract.

Purpose: According to the author, the purpose of AB 4654 is to expand the ability of local government to provide tax breaks to owners of idle urban plots so they can be transformed into urban community gardens.

Fiscal Impact Summary: Indeterminable.

Existing Law: Current law[11] allows cities and counties to create Urban Agricultural Incentive Zones (UAIZs) and offer landowners preferential property tax assessment if the landowner enters into an enforceable contract (UAIZ contract) to restrict vacant, unimproved, or blighted land in urban areas for small-scale agricultural use. UAIZ contracts must be entered into on or before January 1, 2019 and are valid and enforceable for the duration of the contract. The initial contract term must be for at least five years.

While under a UAIZ contract, the law[12] requires assessors to value land at a rate based on the average per-acre value of irrigated cropland in California.

Amended Law: This bill extends the date to enter into a UAIZ contract to January 1, 2029. Additionally, this bill applies specified property size and use requirements to a combination of contiguous properties under a UAIZ contract.

In General: The Urban Agricultural Incentive Zone Act (Act) requires a county assessor to value land that is enforceably restricted by a UAIZ contract at a rate based on the average per-acre value of irrigated cropland in California, as most recently published by the National Agricultural Statistics Service of the United States Department of Agriculture (USDA). The USDA annually publishes this information in August. The Act also requires the Board of Equalization (BOE) to post the published per-acre land values on its website within 30 days of publication by the USDA National Agricultural Statistics Service. No later than January 1 of each assessment year, the BOE must provide county assessors the per-acre value of irrigated cropland in California. Between 2014 and 2018, the per-acre values have ranged from $12,100 to $13,300.

[11] Government Code Section 51042.
[12] Revenue and Taxation Code Section 422.7.

Commentary:

1. **Effect of the bill.** This bill extends the opportunity for cities and counties to create the incentive program and enter into UAIZ contracts with willing property owners for an initial term of five years and requires contiguous properties under a UAIZ contract to count towards minimum and maximum size requirements (1/10 acre to 3 acres).
2. **Summary of Amendments.** The September 1, 2017 amendment deleted the amendment to Government Code Section 51042 to lower the specified "urban" population threshold from 250,000 to 50,000 people.
3. **The incentive program is set to expire in 2019.** The program was first added to law beginning January 1, 2014 via Assembly Bill 551 (Ting). Extending the program gives more cities and counties the ability to create urban gardening programs and allow more property owners the opportunity to enter into UAIZ contracts. The author notes that "the cities of Sacramento, San Diego, San Francisco, and San Jose along with the unincorporated areas in the counties of Santa Clara and Los Angeles have adopted programs allowing property tax breaks for urban agriculture. The cities of Los Angeles and Long Beach are working to establish such programs, and there is interest in many others."

Assembly Bill 652 (Flora), Chapter 80
New Construction: Construction in Progress

Effective July 21, 2017.
Amends Sections 50, 71, and 110 of, and adds Section 82 to the Revenue and Taxation Code.

Summary: Provides that the "base year value" label does not attach to construction in progress (CIP)-related assessments and details the appeals period for CIP-related assessments.

Purpose: To align a taxpayer's appeals filing period to challenge the annual assessed value of partially completed new construction with the taxpayer's ability to receive a refund.

Fiscal Impact Summary: No revenue impact.

Existing Law: CIP-Assessments. The law requires assessors to value CIP at its market value on every January 1 (the lien date).[13] The law uses inconsistent terms to describe this value.[14] Relevant to this bill, RTC Section 110.1(b) states that the sum of various components, one part of which is annual CIP market value, "shall be known as the base year value" of the entire property.

The "base year value" label is significant because of its permanence. Once set, the law limits annual increases to the base year value assigned to new construction to the inflation rate but not to exceed 2%.

Historically, neither the BOE nor assessors considered CIP to have a base year value.[15] Rather, its base year value was first assigned ("new" base year value) upon completion of the project at its market value.[16]

In 2016, a California appellate court ruled that based on the plain language of RTC Section 110.1(b), annual CIP market values are "base year values" that "reset" each year for so long as construction is ongoing.[17] While the case changes the label ascribed to CIP assessments, it didn't alter how CIP assessments are determined. A base year value lien date "reset" still requires the assessor to update a CIP assessment to reflect its current market value annually.

CIP-Related Appeals. Appeals periods differ for base year value assessments and annual market value-based assessments. Because of the long-term significance of a base year value, the law gives taxpayers four years to protest this cornerstone value.[18] In contrast, depending on the

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[13] RTC Sections 50, 71 and 110.1(a)(2)(B).
[14] RTC Section 110.1(a)(2)(B) refers to "fair market value" if new construction is uncompleted on the lien date; Section 110.1(b) refers to "base year value"; Section 50 refers to the "value of new construction in progress" as of the lien date; and Section 71 refers to the "full value" of the CIP every lien date until date of completion. Also note Sections 75.8 and 75.10 refer to "*new* base year value" but for completed construction, not CIP.
[15] Assessors' Handbook Section 502, *Advanced Appraisal*, page 131 and Section 410, *Assessment of Newly Constructed Property*, page 36.
[16] RTC Sections 71, 75.8, 75.10, 110.1(a)(2)(B).
[17] *Ellis* v. *County of Calaveras* (2016) 245 Cal.App.4th 64. Also see LTA 2016/042.
[18] RTC Section 80(a)(3).

county, the deadline for appealing annual market value-based assessments is September 15 or November 30 of the same year the assessment is made.[19]

Relevant to this bill, the *Ellis* court ruled that a CIP appeal is "timely" if filed within four years of the assessment (because the court extended the base year value label to a CIP assessment), but a refund is available only if the appeal is filed in the same year.[20]

Amended Law: CIP-Assessments. This bill amends various sections of law to restore the concept that CIP assessments do not have base year values. The amendments do not change how the law requires CIP assessments to be determined. (RTC Sections 50, 71, 110.1.)

CIP-Related Appeals. This bill adds RTC Section 82, specific to the filing period for CIP-related appeals.

- **Ongoing Construction.** Appeals related to the January 1 market value of construction in progress must be filed by September 15 or November 30 of that same year depending on the county (CIP market value appeal).
- **Completed Construction.** Appeals related to the market value of the construction on the day it is completed must be filed within four years (base year value appeal).

These appeal periods functionally align with the taxpayer's ability to obtain a refund if the appeal is successful.

As a tax levy, this bill would be effective immediately upon enactment.

Background: This bill relates to *Ellis* v. *County of Calaveras* (2016) 245 Cal.App.4th 64. In that case, the court found that the taxpayer was not entitled to a reduction in property taxes paid on an unfinished garage. BOE Letter to Assessors 2016/042 discusses this case in detail.

Commentary:

1. **Effect of the bill.** Although the *Ellis* case altered the BOE's and assessors' historical view that CIP does not have a base year value, in practical application, the case did not change any assessment practice related to CIP assessments. The court's view that each year construction remains ongoing a "*new* base year value" is established (i.e., it resets every year) is functionally equivalent to the view that CIP has no base year value. This bill adds explicit language in statute that CIP does not have a base year value. (See RTC §§ 50, 71, 82, 110,1.(b).)
2. **Improves clarity and eliminates frustration.** The recent ruling in *Ellis* allows taxpayers to undertake actions which are procedurally possible but with no practical effect, which would further frustrate taxpayers. Even though the court stated that annual CIP market values are base year values, in practical application, taxpayers do not have four years to protest these values. Specifically, the court ruled that while there was a "procedurally timely appeal"

[19] RTC Section 1603. See list of county deadlines.

[20] The court ruled that while there was a "procedurally timely appeal" under Section 80(a)(3), Section 80(a)(5) prohibited the taxpayer from any relief.

under Section 80(a)(3), Section 80(a)(5) prohibited the taxpayer from any relief. Thus, the case didn't change the requirement that a taxpayer file an appeal every year that the taxpayer disagrees with a CIP value to receive a refund. For this reason, the amended law explicitly makes the appeal filing period for CIP appeals consistent with the practical considerations that would allow a refund.

3. **Improves tax code consistency.** This bill harmonizes inconsistent terms on the subject of uncompleted construction used in Property Tax Law.

Assembly Bill 1157 (Mullin), Chapter 717
Schools Exemption

Effective January 1, 2018
Among its provisions, amends Section 202 of the Revenue and Taxation Code.

Summary: Provides that the Public Schools Exemption applies to housing for public school district or community college district employees including the employee's possessory interest (PI).

Purpose: To aid in the effort to build affordable housing for public school district and community college district employees to support employee recruitment and retention.

Fiscal Impact Summary: No revenue impact.

Existing Law: The California Constitution exempts from property taxation property owned by the state or local governments[21] and property used exclusively for public schools, community colleges, state colleges, and state universities ("Public Schools Exemption").[22] Since public schools are tax-exempt governmental entities, a public school typically files a claim for the Public Schools Exemption only on property the public school uses but does not own.

PI: Government Employee Housing. The law does not provide a possessory interest exemption for an employee's interest in government-owned employee housing, but case law has found that a taxable PI may exist based on the facts of each case. See Property Tax Rule 28, which lists as an example of commonly encountered taxable PIs, "[t]he possession of an employee in housing owned by a public agency, irrespective of whether occupancy of the housing is a condition of employment except when the facility also serves as the employee's work area to which the employer has full access."

PI: College and Public School Employee Housing. No property tax law provision explicitly relates to public school employee housing including any taxable PI an employee may hold. While the courts have addressed the subject, these cases concern housing provided at the collegiate level. The courts have ruled that school employee housing may be exempt under the Public Schools Exemption where the housing is reasonably necessary to further the primary educational purpose of the public school. Property "used exclusively for educational purposes" includes college or university-provided faculty and student housing because such housing furthers the primary educational purpose of a university or college and is reasonably necessary for the fulfillment of a generally recognized function of a complete and modern college or university.[23]

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[21] Article XIII, Section 3(a) and (b), Revenue and Taxation Code (RTC) Section 202(a)(4).
[22] Article XIII, Section 3(d) and RTC Section 202(a)(3).
[23] *Mann v. County of Alameda* (1978) 85 Cal.App.3d 505.

The Teacher Housing Act of 2016[24] creates a state public policy supporting affordable rental housing on school district (K-12)-owned land restricted to occupancy for teachers and school district employees.

Amended Law: This bill provides that the Public Schools Exemption [Article XIII, Section 3(d) and RTC Section 202(a)(3)] applies to state, county, city, school district, or community college district-owned properties used to provide rental housing for employees of public school districts (K-12) or community college districts. Additionally, the bill extends the exemption to include the public school or community college employee's PI in the housing.

In General. Public Schools Exemption v. Private College Exemption. These are separate and distinct exemptions as noted below:

- **Private Colleges.** The law[25] provides a "College Exemption" applicable to nonprofit educational institutions of collegiate grade. The College Exemption is available to property used exclusively for educational purposes by a nonprofit educational institution of collegiate grade. The property may be either owned or leased.
- **Public Colleges/Public Schools.** Colleges that are part of the public school system, such as community colleges, state colleges, state universities, including the University of California, are not exempt under the College Exemption. They are constitutionally exempt as government owned property. Additionally, they may be exempt under the Public Schools Exemption if the property is used for public school purposes and owned by a private person or entity. Typically, a formal claim requesting the "Public Schools Exemption" is necessary only when the public school does not own the property in question. Public School Exemption claim, BOE-268-A, may be filed by the public school, otherwise the property owner must file Lessors' Exemption claim, BOE 263.

Residential Housing and the Public Schools and College Exemption: Exclusive Use. Relevant to this bill, in the context of residential housing, the courts have not addressed exemption availability below the collegiate level. To qualify for exemption, property must be used exclusively for educational purposes. This purpose includes facilities that are reasonably necessary to further the primary educational purpose of a university or college, such as college- or university-provided faculty and student housing. However, the mere fact that apartments comprised mostly of student tenants are located near campus does not make the units eligible for the college or public schools exemption.[26]

Possessory Interests. In certain instances, a property tax assessment may be levied when a person or entity uses publicly-owned real property that, with respect to its public owner, is either immune or exempt from property taxation. These uses are commonly referred to as "possessory interests" and are typically found where an individual or entity leases, rents, or uses federal, state, or local government facilities and/or land.

[24] Health and Safety Code Sections 53570 to 53574 (SB 1413, Stats. 2016, Ch. 732).
[25] Article XIII, Section 3(e), implemented by RTC Section 203.
[26] Property Tax Annotation No. 690.0006 (CalSTRS-owned apartment via LLC).

RTC Section 107 establishes parameters within which assessors and judicial authorities are to determine the existence of taxable possessory interests. Generally, those determinations are made according to the facts and circumstances in each individual case. Relevant to the issues raised by this bill, the general taxability of various possessory interests is noted below:

- **College and University Student and Staff Rental Housing: Not taxable to tenant.** In the case of rental housing for students and employees of colleges and universities, generally the courts[27] and BOE's legal written opinions[28] have found that the student-tenant or the employee-tenant occupying the housing is not subject to tax for a taxable possessory interest. The possessory interest is not taxable to the tenant if the occupancy can be considered reasonably necessary or incidental to an educational purpose.
- **Affordable Rental Housing: Not taxable to tenant.** In the case of affordable rental housing that is government-owned, the BOE has opined that there is no taxable possessory interest to the tenant occupying the property because it would defeat the public purpose of providing affordable and low-cost housing.[29]
- **Privately Owned Homes on College/University Land: Land is taxable to the homeowner.** In the case of employee-owned homes on public university land, a taxable possessory interest exists in the land. *Connolly et al. v. Orange County* (1992) 1 Cal.4th 1105 holds that the public schools exemption is not available when an employee leases university-owned land underlying the employee-owned home.
- **Other Government-Owned Employee Housing: Possibly taxable.** Depending on the facts, federal-employee[30] and state-employee residents of government owned employee housing may owe tax related to their possessory interest. Additionally, the courts have held that an irrigation district employee residing in a single-family residence owned by the district owes tax on the possessory interest.[31] With respect to military housing, both on-base and off-base, the courts have ruled that military personnel residing in the homes do not have a taxable possessory interest.[32] Property Tax Rule 28 lists, as an example of commonly encountered taxable possessory interests, "[t]he possession of an employee in housing owned by a public agency, irrespective of whether occupancy of the housing is a condition of employment except when the facility also serves as the employee's work area to which the employer has full access."

Background: The Teacher Housing Act of 2016 (Act) (SB 1413, Stats. 2016, Ch. 732) authorizes a school district to establish and implement programs that address staff housing needs. The Act provides clear authorization to school districts to develop housing on district-owned property

[27] See *Connolly et al v. Orange County* (1992) 1 Cal.4th 1105 for a detailed discussion concerning *English v. Alameda County* (1977) 70 Cal.App.3d 266 and *Mann v. Alameda County* (1978) at pp.1125-1127.
[28] Property Tax Annotation No. 660.0225 (Student Housing), 660.0340 (University Staff), 785.000 (State University Exemption).
[29] Property Tax Annotation No. 660.0155 (Low-Income Housing).
[30] *United States v. Fresno County* (1975) 50 Cal.App.3d 633 (National forest service employees).
[31] *McCaslin v. DeCamp* (1967) 248 Cal.App.2d 13 (Irrigation District employee).
[32] *United States v. Humboldt County* (9th Cir. 1980) 628 F.2d 549 (Military personnel).

to provide affordable housing to teachers and school district employees who need it. The Act created a state policy supporting housing for teachers and school district employees, as described in federal tax law, and permits the school districts and developers receiving local or state funds or tax credits for affordable rental housing to restrict occupancy to teachers and school district employees.

Commentary:

1. **Effect of this bill: Public School (K-12) and Community College Employee Housing.** This bill provides clear authorization that the Public Schools Exemption may extend to housing provided below the collegiate level; i.e., to public school district (K-12) employees, as well as to community college district employees. The development of employee housing at the K-12 public school level is an emerging issue, as few employee housing projects at the K-12 public school level have been built in California. To date, the courts have affirmed that the Public Schools Exemption[33] and the College Exemption[34] apply to college and university employee housing (including an individual employee's PI). The courts have not addressed residential housing below the collegiate level. Generally, based on the reasoning in such cases as *Mann v. Alameda County* (1978) 85 Cal.App.3d 505, *Church Divinity School v. Alameda County* (1957) 152 Cal.App.2d 496, and *English v. Alameda County* (1977) 70 Cal.App.3d 226, property is being "used exclusively" for college/university purposes so long as the unit is rented to a student, faculty member, or staff member of the college/university. Explicitly stating that the Public Schools Exemption shall apply to property that provides housing for employees of public schools at the K-12 level and community colleges gives proponents a measure of certainty that public schools below the collegiate level are similarly eligible, avoiding a PI assessment to the employee-tenant residing in the unit. While no provision of law explicitly addresses universities and college employee-provided housing, a long history of case law exists.
2. **Effect of this bill: Possessory Interests.** This bill ensures that neither the employee-tenant nor any school district or community college receives a property tax bill related to the housing. In the case of other *affordable* rental housing properties, the BOE has previously opined that issuing a tax bill to an occupant-tenant for their PI would defeat the public purpose of providing affordable housing. (However, this bill does not limit its provisions to housing rented at an affordable cost). To issue a tax bill to any public school district or community college district because it allows employees from other districts to occupy the housing (or because it leases land it owns to another school district for housing) would similarly appear to defeat the educational public purpose of the Public Schools Exemption. As noted previously, if a PI related tax bill was issued to any public school (or county, in the case of county-owned land), that public school could claim the "Public School Exemption" on units occupied by its employees, given that ownership is not a requirement.
3. **Summary of Amendments.** The June 29 amendments modified the June 15 amendments to delete the extension of the employee possessory interest exemption to state, county, or

[33] Article XIII, Section 3(d).
[34] Article XIII, Section 3(e).

city employees because the law does not provide a government-use based exemption such as the law allows for public school-use. Additionally, the June 29 amendments make clear the exemption applies to rental housing. This is necessary to ensure the bill does not impact the current assessment of PIs related to college and university employees that own homes on leased land owned by the college or university. Finally, the June 29 amendments delete specific reference to the government-owned property exemption [Article XIII, Section 3(b) and RTC Section 202(a)(4)] which provided that the government-owned exemption applies to state, county or city-owned properties used to provide rental housing for public school districts or community college district employees because Legislative Counsel concluded that the public school use exemption amendment covers this scenario and was thus unnecessary. The June 15 amendments recrafted the previous amendments to better reflect the bill's intent. However, the June 15 amendments also expanded the bill's scope by creating a PI exemption for state, county, and city employees residing in employee housing. The Public Schools Exemption is a "use-based" exemption which the courts have held to apply to collegiate level employee housing. With the exception of RTC Section 231[35], no such "use-based" exemption exists for government uses of privately owned land.

4. **Providing affordable housing at the public school level may serve an educational purpose that is reasonably necessary.** In the context of residential housing, the difficulty in recruiting and retaining satisfactory employees are facts that the courts have held constitute a reasonable necessity.[36] Furthermore, the Teacher Housing Act of 2016 has created a state public policy supporting affordable housing for teachers and school district employees.

5. **One Site - Multiple Districts.** In part, this bill provides clear authorization that the Public Schools Exemption extends to property that provides housing to employees of more than one public school district or community college district at the same site. In a 2005 BOE un-annotated legal opinion, BOE staff stated that the Public Schools Exemption only applies to property housing the employees of the public school seeking the exemption (in this case a community college). This opinion related to the construction of rental apartments for employees located on a community college campus where tenant eligibility priority extended to employees from nearby high school districts. The opinion stated that the housing provided to employees of other districts would be ineligible. However, upon review, it appears that this statement was incorrect. To the extent school employees from other districts reside at the property, the other school district could claim the exemption on units its employees occupy as property "used" by the district. This is possible because the Public Schools Exemption (1) can apply on a per unit basis, (2) has no ownership requirement, and (3) has no location limitations. Thus, staff views the proposed employee rental housing amendment (RTC Section 202(b)(2)) as falling within the scope of existing law.

[35] Property exclusively of a governmental character (jail, courthouse) owned by a nonprofit corporation and leased to a governmental entity.
[36] *Church Divinity School* v. *Alameda County* (1957) 152 Cal.App.2d 496.

Assembly Bill 1193 (Gloria), Chapter 756
Low Income Housing: Over-Income Tenants

Effective October 13, 2017.
Amends Section 214 of, and adds Section 259.15 to, the Revenue and Taxation Code.

Summary: Extends the low-income housing property tax exemption to a rent-restricted unit occupied by an over-income tenant (over 80% of Area Median Income (AMI)) who was income-qualified at first occupancy.

Purpose: To allow the property owner to keep claiming the exemption on units occupied by tenants whose incomes rise above 80% of AMI up to 140% of AMI while rent-restrictions remain in force.

Fiscal Impact Summary: Indeterminable, but could exempt up to 14,200 units of unknown assessed value per unit.

Existing Law: Existing law allows property used for lower income rental housing that is owned and operated by a qualifying nonprofit organization to be exempt from property tax under the welfare exemption, provided various conditions and requirements are met. Lower income rental housing owned by a limited partnership in which a nonprofit organization serves as the managing general partner may also qualify for exemption. Generally, to qualify for the exemption, the law requires that the rental housing be financed with specified tax exempt bonds, government loans or grants, or that the property's owner receives low-income housing tax credits (LIHTC) pursuant to Section 42 of the Internal Revenue Code.[37]

Lower Income Household Definition. Property tax law defines lower income households by cross-reference to the Health and Safety Code.[38] This law generally provides that lower income households are those households with incomes at 80% of the Area Median Income (AMI) adjusted for family size and geographic areas of the state. The law requires California's Housing and Community Development (HCD) to annually publish these income limits based on federal Housing and Urban Development (HUD) data.

Proportional Exemption. Relevant to this bill, the property tax exemption extends to "units serving lower income households" and to qualify a unit must be occupied by a lower income household (max income 80% of AMI).[39] The law allows these rental-housing properties a partial exemption equal to that percentage of the value of the property that is equal to the percentage

[37] Revenue and Taxation Code (RTC) Section 214(g)(1)(A) and 214(g)(1)(B). Rental housing without government assistance in the form of low-income housing tax credits or government financing can also qualify, but the exemption is capped to the first $10 million in assessed value and it must be 90% low income occupied. §214(g)(1)(C).
[38] Health and Safety Code Section 50079.5. Additionally, the BOE annually reports the household income limits to assessors for use in administering the low income housing exemption.
[39] RTC Section 214(g)(3)(C).

that the number of units serving lower income households represents of the total number of residential units.[40]

Federal Law: Low-Income Housing Tax Credit Eligibility. The Internal Revenue Code provides that a low-income unit will continue to be treated as a low-income unit if the occupant's income initially met the income limitation and the unit continues to be rent-restricted. Federal law further provides, as specified, that if the occupant's income exceeds 140% of federal law income limitations[41] then the next available unit in the property of a comparable or smaller size must be rented to a low income tenant. If not, the unit occupied by the household with over 140% income threshold ceases to be treated as a low-income unit.

Existing California property tax law has no equivalent provision deeming a unit to be treated as a "low-income" unit when the occupant's household income exceeds the property tax-related income limit of 80% of AMI after move-in. As such, these units become subject to property tax because they are no longer "serving a lower income household" as the law requires.

Amended Law:

Lower Income Household Definition Expansion. This bill effectively increases the "lower income household" income limit from 80% to 140% of AMI, adjusted for family size, in limited instances. Specifically, this bill allows owners of low-income rental housing properties receiving federal low-income housing tax credits to continue to claim the property tax exemption on units occupied by tenants whose household income increases after move-in[42] to a level above the property tax related income limit of 80% of AMI up to the federal law related limit of 140% of AMI provided the units remain rent-restricted. No property tax exemption is available if the income of the occupants of the unit increases above 140% of AMI, adjusted for family size. *§214(g)(2)(A)(iii)(I)*

Units Serving Lower Income Households. This bill provides that if the unit remains rent restricted, "units serving lower income households" includes units occupied by tenants who were lower income households when they first moved into the unit, but whose income has subsequently increased, as specified. *§214(g)(3)(C)(ii)(I)*

Additional Reporting Requirement. This bill requires the rental housing owners to provide additional information with their annual welfare exemption claim for rent-restricted units occupied by over-income tenants. The owner must annually provide a list of those units and non-personally identifiable information about the occupants of those units which includes: (1) the actual household income of the occupant, (2) the maximum rent that may be charged to the occupant, and (3) the actual rent charged to the occupant. This bill requires the assessor to keep this additional information confidential to protect the privacy of the occupant's personal and financial information. *§259.15*

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[40] RTC Section 214(g)(1).

[41] Section 42(g)(2)(D) of the Internal Revenue Code, "Treatment of units occupied by individuals whose incomes rise above limit."

[42] Specifically, "if the occupants were lower income households on the lien date (January 1) in the fiscal year in which their occupancy of the unit commenced and the unit continues to be rent restricted." RTC§214(g)(2)(A)(iii)(I).

Sunset Date. This bill would go into immediate effect. However, its provisions are operative for fiscal years 2018-19 to 2027-28. *§214(g)(2)(A)(iii)(II) and §259.15(a)*

In General: Government Financing or Tax Credits: Proportional Exemption. When a nonprofit organization owns and operates a low-income rental housing property that receives government financing or low-income housing tax credits, all of the properties may be exempt from property tax. Generally, a low-income housing property, including a single family home, may qualify for the welfare exemption provided:

- **Government Assistance.** The nonprofit organization owner receives low-income housing tax credits or government financing on the property.[43] *§214(g)(1)(A) and (B)*
- **Use Restriction.** The property is subject to a recorded deed restriction, regulatory agreement, or other legal document[44] restricting its use for low-income housing purposes at specified rents. *§214(g)(2)(A)(i) and Property Tax Rule 140*
- **Income Limits.** Lower income households is defined by cross reference to Health and Safety Code Section 50079.5. The term "lower income" may be used to mean 0% to 80% of AMI. *§214(g)(3)(A)*
- **Rents Charged.** The rents charged to lower income household occupants do not exceed the rent prescribed by the deed restrictions or regulatory agreement. *§214(g)(1)(A) and §214(g)(2)(A)(i)*
- **Property Tax Savings.** The owner certifies that the funds otherwise spent to pay taxes are instead used to maintain affordability of, or reduce rents of units occupied by, the lower income households. *§214(g)(2)(B)*
- **Occupancy.** While there is no minimum percentage of units that must be occupied by lower-income households, the exemption only extends to the units serving lower-income households. *§214(g)(1)*
- **Limited Partnership: Special Requirements.** In the case of housing owned by a limited partnership in which the managing general partner is an eligible nonprofit organization or an eligible limited liability company, use and rent restrictions must be contained in an enforceable and verifiable agreement with a public agency or in a recorded deed restriction. *§214(g)(2)(A)(ii)*

The law requires property owners to annually file a claim to receive the exemption. The claim must state the number of units serving low-income households, which includes vacant units, and requires an attachment that lists qualified households. To qualify, the property owner must obtain a signed statement for each household certifying that the family household income did not exceed the income limits for that year.

[43] The exemption continues to apply if the government financing has been refinanced or paid in full or if the allocation of the low-income housing tax credits has terminated or expired, during the period of restricted use and rent levels provided that the government agency that is a party to the regulatory agreement continues to monitor and enforce compliance with the regulatory agreement. Property Tax Rule 140(c).

[44] An "other legal document" is not permissible if a limited partnership owns the property with a managing general partner that is a nonprofit organization. RTC §214(g)(2)(A)(ii).

Commentary:

1. **The effect of this bill.** This bill extends the welfare exemption to units occupied by households with incomes over 80% of AMI in properties owned by a person eligible for and receiving low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code if, generally, the occupants initially met the income limitation and the unit continues to be rent restricted. *§214(g)(2)(A)(iii)*

2. **Summary of Key Amendments.** The **September 1, 2017 amendment** substituted "their occupancy of the unit commenced" for "use of the unit commenced" in RTC Section 214(g)(2)(A)(iii) to clarify that the exemption applies not only to the initial occupant of the unit, but also to subsequent occupants. The **July 19, 2017 amendments** add household occupant income and rent reporting requirements as requested by the California Assessors' Association to verify eligibility related to the expansion of the welfare exemption. (§259.15) In addition, the July 19, 2017 amendments delete in RTC Section 214(g) cross references to income limits in federal law to simplify administration as recommended by the Senate Governance and Finance Committee staff. This amendment also serves to establish a bright-line upper limit threshold for allowable over-income tenant unit occupancy at 140% of AMI, adjusted for family size. This addresses implementation concerns with applying federal law to state law as noted in the prior analysis and discussed in Comment 4. The **June 28, 2017 amendments** redraft the bill's provisions to better reflect its intent. As introduced, the inserted references to IRC Section 42(g)(2)(D) were located in sentences that discussed rent limits, not occupant income limits. BOE staff developed the amendments to address this as well as include a direct statement (§214(g)(3)(C)(ii)(I)) that those units can be "counted" as exemption-eligible when calculating the percentage of qualified units to total units to aid in the administration of this law change. The amendments also delete the May 16, 2017 amendments that made the bill contingent upon a specific annual budget appropriation. The **May 16, 2017 amendments** limited the provisions to fiscal years 2018-19 to 2027-28.

3. **Property tax hardship.** Proponents state that deed or regulatory restrictions generally prohibit the owner of these properties from evicting tenants for being over-income or increasing the over-income tenant's rent. The resulting property tax "savings" become a loss on these units and present a financial hardship to the property owners, since rents remain restricted, but property taxes increase.

4. **The "units servicing lower income household" designation ceases for any unit occupied by a household with an income above 140% of AMI, adjusted for family size.** This bill establishes a bright-line cut off at 140% of AMI. A bright-line is necessary to simplify property tax administration. Under federal law a unit continues to be treated as a low-income unit so long as the occupants initially met the income threshold requirement and the unit remains rent restricted. Revocation of the "low-income unit" designation under federal law appears predicated on the "next available unit" in the property being rented to a non-income qualified person. However, the future rental of the next available unit is not practical for property tax administration purposes because use on the lien date is determinative. Moreover, in a 100% affordable housing project, where all newly available units will be rented to income-qualified persons, it appears possible that the revocation of

the low income unit designation would never occur rendering the intent of a cap at 140% of AMI ineffectual under the property tax law.

5. **Other low-income housing property owners.** Will non-LIHTC rental housing property owners similarly situated seek the exemption extension to units occupied by over-income tenants? For instance, properties financed with tax-exempt bonds and government financing may seek similar changes.

Assembly Bill 1718 (Committee on Revenue & Taxation), Chapter 592
Mining Properties

Effective January 1, 2018
Repeals Section 53.5 of the Revenue and Taxation Code

Summary: Repeals a requirement to consider leach pads, tailings facilities, and settling ponds associated with mining properties as separate appraisal units.

Purpose: To repeal an administratively impractical requirement that is not implemented.

Fiscal Impact Summary: Negligible.

Existing Law: Current law[45] requires the assessor to annually set the taxable value of real property at the lower of its factored base year value or current market value. The law[46] provides that "real property" is that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately. An exception to this general law[47] exists for leach pads, tailing facilities, and settling ponds on mining or mineral property. The law directs that the assessor carve out these components of the real estate and annually determine whether the factored base year value or current market value is lower for these specific items. However, these items are not sold separately nor are they normally valued separately in the marketplace. In practice, this provision in law is not implemented.

Amended Law: This bill repeals RTC Section 53.5 so that leach pads, settling ponds, and tailing facilities are evaluated for assessment purposes together with the rest of the mining appraisal unit (that which is normally bought and sold in the market place).

Background: Effective January 1, 1999, AB 1246 (Stats. 1998, Ch. 226) added Section 53.5 to Property Tax Law. Since then, BOE staff has found in its assessment practice surveys that counties do not comply with this law because it is administratively impracticable. In 2014, in an effort to help assessors find a method to comply with the law, the BOE recommended[48] that assessors use the cost approach to estimate the value of these items when first put in place and subsequently deplete the value based upon the remaining capacity of the leach pad, settling pond, or tailings dump. However, implementing this recommended approach would divert limited staffing resources. Segregating this portion of the property to measure a possible decline in value on two distinct parts of the appraisal unit consumes limited staffing resources with no indication that it aids in the valuation process. No efficient method exists to value these components separate from the rest of the mining operation since they are too closely integrated into the operation to be treated separately.

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[45] Revenue and Taxation Code Section 51.
[46] RTC 51(d).
[47] RTC 53.5 added by AB 1246 (Stats. 1998, Ch. 226).
[48] LTA 2014/043.

Commentary:

1. **Effect of the bill.** Repealing this provision acknowledges that valuing leach pads, tailings facilities, and settling ponds as a separate appraisal unit is administratively impractical and allows the BOE to discontinue addressing noncompliance in county assessment practices surveys.
2. **Administratively impractical requirement.** No stand-alone marketplace exists from which assessors can derive market value for leach pads, settling ponds, or tailings dumps. These facilities are sold along with the rest of the mining property. They have no independent value.
3. **Consumes limited resources.** The special carve out requirement was added about 20 years ago. The BOE has found that most counties are unable to implement the requirement, as it consumes limited staffing resources with no indication that it aids in the valuation process.
4. **Restores the mining appraisal unit.** Since persons in the marketplace commonly buy and sell this property as a unit, the assessor can evaluate the entire mining property to determine whether its assessment should be reduced based on market conditions.

Senate Bill 447 (Nielsen), Chapter 132
Multi-County Assessment Appeals Board

Effective January 1, 2018
Adds Sections 1750 – 1755.1 to the Revenue and Taxation Code

Summary: Allows participating counties to create a multi-county assessment appeals board.

Purpose: To allow those counties where the board of supervisors serves as the appeals board to pool resources and delegate the function to a multi-county appeals board.

Fiscal Impact Summary: No revenue impact.

Existing Law: The California Constitution allows the Legislature to authorize county boards of supervisors to create a joint appeals board to serve as the appeals board for each participating county. To date, the Legislature has not enacted the necessary statutory provisions to allow multi-county appeals boards.[49]

Amended Law: This bill allows the boards of supervisors of two or more counties to establish a multijurisdictional assessment appeals board (multi-county board) to equalize the valuation of taxable property within each participating county. Once established, each participating county may not continue to operate its own appeals board while the multi-county board exists.

- **Board Composition.** The multi-county board must have at least three members, with at least one member from each participating county. *§1753*
- **Member Eligibility**. Members must have at least five years of professional experience in California as a CPA or public accountant, licensed real estate broker, attorney, or accredited property appraiser, or a person may be appointed if the nominating member of the board of supervisors has reason to believe the person possesses competent property appraisal and taxation knowledge. Boards of supervisor members are ineligible to serve. *§1753.1(c); §1753.2*
- **Training.** The training requirements that currently apply to single-county appeals board members will apply to multi-county members. *§1753.1(c)*
- **Legal Actions.** Multi-county appeals board decisions appealed to the courts would be filed in the superior court for the county in which the property is located. *§1753.3*

Additionally, the enacting provisions address procedures to establish the multi-county board, withdraw from the multi-county board, and specify which county clerk will function as the lead

[49] Section 16 of Article XIII. Proposed Revision of Article XIII California Constitution, Report of the Constitutional Revision Task Force of Article XIII (1974), page 25. "Legislation under which this option could be exercised would have to be enacted before this passage would become operative."

county clerk. The bill provides that, unless specifically stated otherwise, existing laws and regulations for a single-county board would apply to a multi-county board.[50]

- **Sunset Date: January 1, 2028.** These provisions remain in effect only until January 1, 2028, and as of that date are repealed. *§1756*

In General: The Constitution[51] establishes in each county an independent body to hear property assessment related disputes between the county assessor and property taxpayers, commonly referred to as the appeals board. Either the county board of supervisors performs this duty directly meeting as the "county board of equalization" or the county creates a separate "assessment appeals board" with members of the board of supervisors appointing persons to serve. Appeals boards act in a quasi-judicial capacity. The appeals board functions as a trial court with the superior court reviewing the board's decision when necessary.

In 17 counties, the boards of supervisors serve as the appeals board.[52] In the remaining counties, the members appoint persons to serve.[53] Appointment eligibility requires five years of professional experience in California in the following professions: CPA or public accountant, licensed real estate broker, attorney, or accredited[54] property appraiser.[55] However, in the 30 counties with a population under 200,000, a person can serve without meeting these requirements if the nominating member deems the person to have competent knowledge of property appraisal and taxation.[56] The law prohibits former assessor office employees from serving for three years.[57]

The BOE publishes the Assessment Appeals Manual which includes detailed information specific to appeals boards.

Legislative Background: Article XIII's 1974 Constitutional Revision. The present language of Article XIII, Section 16 was adopted on November 5, 1974 through Proposition 8 (ACA 32). In pertinent part it reads:

> Two or more county boards of supervisors may jointly create one or more assessment appeals boards which shall constitute the county board of equalization for each of the participating counties.
>
> The Legislature shall provide for …. the procedure by which two or more county boards of supervisors may jointly create one or more assessment appeals boards.

[50] Laws: RTC Sections 1601-1645.5; Regulations: Property Tax Rules 301-326.
[51] Article XIII, Section 16.
[52] Alpine, Amador, Colusa, Del Norte, Glenn, Inyo, Kings, Lake, Mendocino, Modoc, Napa, Plumas, San Benito, Sierra, Tehama, Trinity, and Tuolumne.
[53] RTC Section 1623.1.
[54] Accredited by a nationally recognized professional organization, the Office of Real Estate Appraisers, or the Board of Equalization.
[55] RTC Section 1624.05.
[56] RTC Section 1624.
[57] RTC Section 1624.1.

The Report of the Constitutional Revision Task Force of Article XIII (1974) explains the constitutional revisions in detail. The explanatory comment on Section 16 states:

> This revision makes only the following substantive changes in the local equalization portions of existing Article XIII, Sections 9 and 9.5:
>
> 1. It permits two or more county boards of supervisors to join in the creation of one or more assessment appeals boards to serve as the county board of equalization for each of the counties entering into such an arrangement. **Legislation under which this option could be exercised would have to be enacted before this passage would become operative.** [Emphasis added.]

In 1992, legislation to activate multi-county boards was pursued, as described below. It does not appear any other legislation has been introduced to date.

Appeal Referral to Multi-County Board. In 1992, SB 1831 (Thompson) would have allowed participating counties to refer select appeals to a multi-county board. At that time, a cable company appealed a change in ownership reassessment in 10 counties. The issue on appeal was the same in each county. Napa County, seeking to consolidate the issue for all the counties, sponsored legislation to allow a joint appeals board for all the affected counties. Supporters, primarily governmental entities, contended that a joint board would conserve resources, avoid duplication of identical questions of law and fact, result in consistent appeals outcomes, simplify and streamline the appeals process when one taxpayer has property in several counties, and provide cost efficiency for government and taxpayers. Some industry representatives and taxpayer groups opposed the measure expressing concern that the joint board membership would be rigged against them.

At that time, opponents disagreed with the premise that joint boards could be used for specialized appeals, or groups of related appeals. Opponents claimed that such boards must act as the counties' board for all appeals. Amendments were made to that bill in an attempt to address that concern. This bill was held in the Senate Revenue and Taxation Committee.

Other legislation to allow cross-county pooling of resources is summarized below.

- **Joint-County Hearing Officers: Cross County Mining Properties.** In a similar vein, the law allows the appeal of issues related to contiguous mining and mineral property that crosses county borders to be heard by a panel of hearing officers from each county. (RTC Sections 1642- 1645.5, SB 2295, Garamendi, Ch. 1480, Stats. 1988.) However, the joint-hearing officers' decision in the appeal is not final. Either the assessor or the property owner can appeal the decision to each county's appeals board. But the law bestows a rebuttable presumption of correctness upon the joint-hearing officers' decision.

- **Conflict of Interest Appeals: Hearing by Another County.** In 2009, legislation was enacted to allow the established assessment appeals board of one county to hear and decide certain property tax assessment appeals filed in another county. This authorization was specific to appeals filed by persons having an employment-related association with the assessment appeals board, creating a conflict of interest. (RTC Section 1622.6, AB 824, Harkey, Ch. 477, Stats. 2009.) This legislation provided a cost-effective and efficient means for the neighboring counties of Los Angeles and Orange to use cross-county appeals boards rather than empanel a special board to hear these appeals.

Commentary:

1. **Effect of the bill.** This bill activates the constitutional provisions of Section 16 of Article XIII allowing counties to form multi-county assessment appeal boards.
2. **Summary of Amendments.** The **June 29, 2017 amendments** add a sunset provision repealing these laws on January 1, 2028. The **April 18, 2017 amendments** prohibit a county participating in a multi-county board from concurrently running its own single-county board. This amendment intends to prevent parties from appeals board "forum shopping" by allowing only one operational appeals board at a time. The amendments also make minor technical suggestions noted in the prior analysis related to training requirements and filing court actions.
3. **Boards of Supervisors sit as the county board of equalization in seventeen counties.** The bill's sponsor, Rural County Representatives of California (RCRC), notes that in many of these low-population counties the primary reason the counties do not appoint assessment appeals boards is that finding qualified applicants to serve is a challenge. The sponsor states "while most county supervisors can fulfill their obligations as members of a local board of equalization, RCRC believes it is wise to maximize the use of assessment appeals boards given the complex nature of developing the county's property tax roll." They further note "by allowing counties to elect to participate in a multi-county assessment appeals board, SB 447 offers the opportunity for increased expertise in hearing taxpayer appeals." The sponsor states that SB 447 is a "common-sense approach to achieving economies of scale in county assessment appeals."
4. **Member eligibility: less stringent requirements.** RTC Section 1624's less stringent qualifications for members appointed by a county with a population under 200,000 would apply to qualifications required of members appointed to multi-county boards regardless of the participating county's population. (Proposed RTC Section 1753.1.) Normally, RTC Section 1624.05 applies to counties with a population over 200,000 and requires specific occupational and experience-related qualifications, which RTC Section 1624 waives.
5. **Any county could participate.** While the bill's impetus stems from those counties without appointed assessment appeals boards, any county, including those that currently appoint assessment appeals boards, could partner with another county to create a multi-county board.
6. **The bill's language requires that the multi-county board rule on all appeals from each participating county.** The bill uses the phrase "to equalize the valuation of taxable property within each participating county." (RTC Section 1752(a).) For example, two neighboring

counties would run one "pooled" board to hear all appeals from both counties. Additionally, the bill expressly prohibits participating counties from operating their own board during the period the multi-county board exists. (RTC Section 1752(b).)

7. **Other multi-county appeal scenarios.** Previously, interest in other ad hoc joint appeals boards has been expressed. For example, in 1992, as noted previously, legislation was introduced to allow select appeals on an identical issue to be consolidated and sent to a multi-county board. In recent years, a desire to have one appeal for certificated aircraft assessments made under the "lead county" provisions has been expressed; however, these provisions recently sunset and legislation on a single appeal at the county level was never introduced. Given that this bill appears to encompass all appeals for each participating county, it appears future legislation would be necessary to pursue multi-county boards that are more targeted.
8. **Appeals hearing location.** The bill is silent with respect to meeting locations. Some taxpayers may need to travel to a less convenient location in another county for their appeal.
9. **This bill freezes training and eligibility requirements to those in current law.** The bill keys eligibility and training requirements for multi-county members to the same requirements for single-county members in counties with populations of less than 200,000, as statutorily stated as of January 1, 2017.
10. **Board of Supervisors sitting as appeals board.** On occasion, a conflict of interest charge is alleged against the board of supervisors sitting as the county board of equalization. The allegation is that the board of supervisors is inherently biased in deciding assessment appeals because the county benefits financially when the assessor wins. If counties that use their board of supervisors as the county board of equalization participated in joint boards comprised of members who do not sit on the board of supervisors, that criticism could be abated.
11. **Practical and cost-effective.** Given the constitutional authorization, the challenges faced by small or rural counties, and the inherent efficiency that joint-boards would offer, legislation to allow joint boards gives counties more practical options.

Senate Bill 639 (Hertzberg), Chapter 220
Assessment Jurisdiction: Nonconventional Electric Generation Facilities

Effective January 1, 2018.
Amends Section 721.5 of the Revenue and Taxation Code.

Summary: Adds facilities producing power from sources other than conventional power sources that are also exempt wholesale generators (EWG) to the types of facilities excluded from state assessment.

Purpose: To allow local assessment of the specified facilities, which, for solar facilities, permits application of the solar new construction exclusion.

Fiscal Impact Summary: No immediate revenue impact.

Existing Law: State-assessed electrical generation facilities. The law requires the BOE to annually assess every electric generation facility with a generating capacity of 50 megawatts or more that is owned or operated by an electrical corporation, as defined.[58] An "electric generation facility" does not include (1) a qualifying small power production facility, as defined, and (2) a qualifying cogeneration facility, as defined.[59]

Locally-assessed solar new construction exclusion. In the case of locally-assessed property, the law generally provides that newly constructed active solar energy systems are excluded from assessment as new construction until there occurs a change in ownership. At that time, the law requires the solar project to be reassessed at its full cash value as of the change in ownership date.[60] This exclusion applies to a facility with a generating capacity of any size but does not apply to state-assessed property.[61]

Conventional power sources. The law defines conventional power sources as nuclear, hydropower greater than 30 MW, and the combustion of fossil fuels (unless using cogeneration technology).[62]

Exempt wholesale generators. Federal law defines EWG's as "any person determined by the Federal Energy Regulatory Commission to be engaged directly, or indirectly through one or more affiliates . . ., and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale."[63]

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[58] Public Utilities Code (PUC) Section 218 (a) and (b).
[59] Revenue and Taxation Code (RTC) Section 721.5.
[60] RTC 73.
[61] Proposition 13's change in ownership and new construction assessment provisions do not apply to state-assessed property. *ITT World Communications, Inc.* v. *City and County of San Francisco* (1985) 37 Cal.3d 859.
[62] PUC Section 2805; BOE Property Tax Annotation No. 610.0088 opines that power from solar facilities are "other than conventional" since it is not listed in PUC 2805.
[63] Public Utility Holding Company Act of 2005 (PUHCA 2005).

Amended Law: This bill excludes a third type of electric generation facility from state-assessment: facilities producing power from other than a conventional power source that is an exempt wholesale generator, as defined.

In General: The California Constitution authorizes the BOE to annually assess companies that transmit or sell electricity.[64] The BOE's longstanding practice is to assert assessment jurisdiction only over those entities that are public utilities.

County assessors typically assess "nonconventional" facilities (e.g., solar, wind, geothermal) regardless of rated capacity. The BOE typically assesses nonconventional facilities only if they are owned by rate-regulated utilities and, if so, includes its value in the annual unitary state assessment set by BOE.

The law provides a new construction exclusion for active solar energy systems, but it only applies if the county assessor assesses the property (i.e., is locally-assessed). The California Supreme Court ruled that Proposition 13's (Article XIII A) assessment rollback, its 2% limit on annual assessment growth, and its limit on current market value assessment only upon a change in ownership or new construction, do not apply to state-assessed property.

In 1980, the voters modified Proposition 13 to create a new construction exclusion for active solar energy systems.[65] This is not a real property tax "exemption" but a new construction "exclusion." The exclusion/exemption distinction is important for several reasons:

- The exclusion terminates if there is a transfer of the property resulting in a change in ownership (i.e., there is a reappraisal event);
- The exclusion extends only to the solar system itself, while the land and other non-solar related improvements remain taxable.
- The exclusion is inapplicable to state-assessed property such that facilities that produce power from nonconventional power sources would be fully taxable.

Differences between State and Local Assessment. The following table notes key differences between state and local assessment.

	State-Assessed	**Locally-Assessed**
Value Standard	<u>Real Property</u> <u>(Including Fixtures)</u> Fair Market Value <u>Personal Property</u> Fair Market Value	<u>Real Property</u> <u>(Including fixtures)</u> Acquisition Value Based with Max 2% CPI annual adjustment (unless Fair Market Value is lower) <u>Personal Property</u> Fair Market Value

64 Article XIII, Section 19.
65 Proposition 7, implemented via RTC Code Section 73.

	State-Assessed	Locally-Assessed
Appraisal Unit	Unitary or Separate Depending on Property	Separate Appraisal Unit
Reassessment Triggers	Annually Every January 1	Limited Change in Ownership or New Construction
New Construction Exclusions including Solar	No	Yes
Change in Ownership Exclusions or Base Year Value Transfers	No	Yes
Value Setting	BOE Members	County Assessor
Appeals	BOE Members[66]	Assessment Appeals Board
Court Review	Trial *de novo*[67]	Legal Issue – Trial *de novo* Factual Issue[68] –Administrative Record Review
Basic Tax Rate	1%	1%
Revenue Allocation: Generally	Unitary Base + "County Wide" Incremental Growth Unless Special Provisions are enacted.	Situs-Based (local tax rate area)
Exception: **Electric Generation Facilities**	Situs-Based RTC 100.9(a)(3)	Situs-Based
Exception: **Public Utility Owned Facilities Built After 1/1/07**	Hybrid RTC 100.95	N/A
Disaster Relief - Post Lien Date	No	Yes

Background. After the 1996 deregulation of the electric industry and subsequent energy crisis, the BOE examined its assessment jurisdiction over certain companies owning generating facilities and selling electricity. Consequently, during this timeframe the assessment jurisdiction over some facilities between the BOE and county assessors changed, and then switched back, as noted on the following page (Original Rule 905 and Amended Rule 905). Additionally, as a result of BOE's rulemaking activities, RTC Section 721.5, the section this bill amended, was added[69] to codify Amended Rule 905. AB 81 also addressed property revenue allocation from these plants, an issue outside of the purview of BOE. Both measures require the BOE to assess the same facilities, and provide the same exceptions to that state-assessment mandate. Ultimately, Amended Rule 905 and Section 721.5 were litigated and upheld in *Independent Energy Producers v. State Board of Equalization* (2004) 125 Cal.App.4th 425.

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[66] Under current law.
[67] RTC Section 5170. With trial *de novo*, a court can receive and hear new evidence and is not restricted to a review of the administrative record.
[68] Questions of law versus fact: In a refund action for locally-assessed property taxes, where the issue is a question of law, the taxpayer has a right to a trial *de novo*, with the court being able to receive and consider new evidence. When the issue is a question of fact, the court is restricted to a review of the county assessment appeal board's findings and decisions (i.e., the administrative record).
[69] Stats. 2002, Ch. 57, AB 81, Migden.

A brief history on state assessment v. local assessment of electric generation facilities follows:

- Before 1999:
  - BOE assessed electric generation facilities owned by rate-regulated public utilities.
  - Assessors assessed other facilities, including wind, solar, geothermal, and co-generation facilities.
- Between 1999 and 2002: (Original Rule 905)
  - The BOE transferred assessment jurisdiction over 22 divested public utility generation facilities and certain new facilities to be constructed post-deregulation.
  - BOE limited its assessment jurisdiction to electric generation facilities still owned by rate-regulated public utilities. That is, facilities constructed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission.
  - Assessors continued to assess wind, solar, geothermal, and co-generation facilities.
- Beginning 2003: (Amended Rule 905 and RTC 721.5)
  - BOE reasserted assessment jurisdiction over those facilities over 50 MW and owned by electric corporations.
  - The Legislature mandated BOE-assessment of these same facilities.
  - Assessors continued to assess wind, solar, geothermal, and co-generation facilities.

Since 2003, no assessment-jurisdiction changes to Section 721.5 and Rule 905 have been proposed. However, legislation has been enacted related to the allocation of property tax revenues from certain new state-assessed electric generation facilities. [AB 308 in 2010; SB 1317 in 2006; and AB 2558 in 2004.]

Commentary:

1. **Effect of bill.** This bill adds certain facilities that produce power from nonconventional power sources to the list of facilities that the BOE is not required to assess. This allows the facilities to be locally assessed. In the case of solar facilities, local assessment allows the facility to qualify for the new construction exclusion.
2. **Issue.** The proponents note that it is not currently clear that renewable projects that sell to private electric service providers are exempt from RTC Section's 721.5 state-assessment mandate. The proponents seek to update the law's expressly listed exceptions to include this emerging class of non-public utility renewable generators in the wake of the State's Renewable Portfolio Standard Program and environmental commitment. The tax treatment

uncertainty over these facilities hampers their ability to develop and build these facilities because the associated property tax obligations are not clear.

3. **Electrical corporations.** For nonconventional power facilities of 50 MW or more, whether the owner is an "electrical corporation" under the PUC cross-referenced definition[70] is critical to whether the facility must be state assessed. Under this bill, it is not necessary for the BOE to examine whether the facility's owner meets the "electrical corporation" definition. Instead, the type of power being used and EWG status provide a bright line to determine assessment jurisdiction and relieves the BOE from making assessment jurisdiction decisions on a case-by-case basis. It also removes this element of uncertainty for the BOE, assessors, and facility owners.

4. **Using and selling power.** As larger-scale projects are built, the way the power produced from these facilities is used and sold may evolve. The PUC cross-referenced definition of "electrical corporation" on which the property tax law depends generally excludes facilities generating power consumed onsite, power consumed on an immediately adjacent site, power sold to another electrical corporation, and power sold to a state or local agency. This new exception for nonconventional power generating facilities makes irrelevant to whom power is sold for purposes of the state-assessment mandate of Section 721.5.

5. **EWG Status.** Seeking EWG status is optional. EWG status is significant because it provides exemptions or waivers of certain requirements under the federal Public Utility Holding Company Act of 2005 (PUHCA).[71]

6. **BOE Assessment Jurisdiction.** It has been the BOE's longstanding position that it has assessment jurisdiction only over electric generating facilities that are public utilities. A recent BOE Legal staff opinion found that a solar electrical generating facility built to sell 100% of its energy to one customer for its exclusive use, not to the public, is appropriately assessed at the local level because the facility is not dedicated to public use and is not a public utility. Based on Section 721.5, the BOE does not assert assessment jurisdiction over solar facilities when they are not "electrical corporations" as defined in PUC 218 (a) and (b). But Section 721.5 does not exclude from state assessment facilities producing power from nonconventional power sources, including solar, when the facility is an "electrical corporation" as defined in PUC 218 (a) and (b). To date, all renewable energy projects (solar, wind, and geothermal) not owned by a public utility have been locally assessed since none have met the definition of "electrical corporation" or have been determined not to be a public utility.

7. **This bill deletes reference to any pre-existing contradictory BOE regulation.** This obsolete language relates to the period of time when BOE assessment jurisdiction was in a state of flux, as explained in the Background.

[70] PUC Section 218 (a) and (b).
[71] See Federal Energy Regulatory Commission (FERQ) EWG website.

TABLE OF SECTIONS AFFECTED

SECTIONS		BILL NUMBER	CHAPTER NUMBER	SUBJECT
Government Code				
§51042	Amend	AB 465	313	Urban Agricultural Incentive Zone
§54238.8	Add	AB 115	20	Affordable Sales Program
Revenue and Taxation Code				
§50	Amend	AB 652	80	Lien Date Value of Construction in Progress
§53.5	Repeal	AB 1718	592	Mining Property Separate Appraisal Unit
§71	Amend	AB 652	80	Construction in Progress Lien Date Value
§82	Add	AB 652	80	Construction in Progress Appeal
§110.1	Amend	AB 652	80	New Construction Base Year Value
§202	Amend	AB 1157	717	School Exemption – Employee Housing
§214	Amend	AB 1193	756	Welfare Exemption – Low-Income Housing – Over Income Tenants
§259.15	Add	AB 1193	756	Welfare Exemption – Low-Income Housing – Over Income Tenants Filing Requirements
§721.5	Amend	SB 639	220	Assessment Jurisdiction of Electric Generation Facilities
Chapter 1.5 (beginning with §1750)	Add	SB 447	132	Multijurisdictional Assessment Appeals Boards