California State Board of Equalization,
Legislative and Research Division

LEGISLATIVE BULLETIN

State Capitol Building (from the East) c.1945
Photo courtesy of California State Archives

PROPERTY TAX LEGISLATION 2005

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Assembly Bill 14 (Harman) Chapter 281

Condominium Conversions – Parcel Numbers and Separate Assessments

Effective January 1, 2006. Amends Sections 2188.7 and 2823 of, and adds Section 327.5 to, the Revenue and Taxation Code.

BILL SUMMARY

This bill prohibits an assessor from taking certain actions to divide an existing residential structure into a subdivision for property tax assessment purposes until after a subdivision final map or parcel map is recorded.

Sponsor: City of Huntington Beach

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 327 provides that the assessor may renumber or reletter parcels or prepare new map pages to show combinations or divisions of parcels.

Existing law in the Revenue and Taxation Code provides for the separate assessment of specified interests in real property under certain conditions. Those interests include:

- Condominium –Sections 2188.3 and 2188.6
- Planned development - Section 2188.5
- Community apartment project, stock cooperative, or limited equity housing cooperative - Section 2188.7

In addition, Section 2188.11 provides that the assessor may separately assess certain undivided interests as required by Sections 2821 et. seq. Revenue and Taxation Code Section 2821 allows any person filing an affidavit of interest to apply to the tax collector to have any parcel separately valued for the purpose of paying property taxes. Section 2823 requires the assessor to then determine the separate valuation for the parcel.

AMENDMENT

This bill adds Section 327.5 to the Revenue and Taxation Code to prohibit an assessor from (1) assigning a parcel number or (2) preparing a separate assessment or a separate valuation to divide any existing residential structure into a subdivision, as defined in Section 66424 of the Government Code, until a subdivision final map or parcel map as described in Sections 66434 and 66445, respectively, of the Government Code has been recorded as required by law. If a parcel map requirement is waived, the property owner must provide the assessor with a copy of a finding to that effect from the proper local agency.

This bill amends Sections 2188.7 and 2823 of the Revenue and Taxation Code to prohibit a separate assessment or a separate valuation to divide any existing residential structure into a subdivision, until a subdivision final map or parcel map has been recorded as required by law. If a parcel map requirement is waived, the property owner must provide the assessor with a copy of a finding to that effect from the proper local agency.

In practical application this requires an assessor to verify that a property owner requesting these specified actions on an existing residential structure (e.g., an apartment complex, fourplex, or other multi-family dwelling) into individual assessment units (e.g. partition of the structure into individual units) has recorded a subdivision final map or parcel map on the subject property before renumbering or relettering the parcel to show the division of the parcels. In addition, it precludes the assessor from making a separate valuation for purposes of processing a request by a property owner or other interested party that has applied to the tax collector for a separate assessment as provided by Section 2821.

IN GENERAL

Subdivision Map Act. The Senate Floor analysis of this bill provides a general overview of the Subdivision Map Act as it relates to this bill. It notes that under current law, any subdivision of property for the purpose of sale, lease, or finance is subject to the Subdivision Map Act. Subdivisions into five or more parcels require local government approval of both a tentative subdivision map, which is discretionary, subject to whatever conditions are established by local ordinance, and a final subdivision map, which is ministerial once all of the conditions of the tentative map have been fulfilled. Subdivisions into four or fewer parcels require local government approval of a parcel map, which is also discretionary. In either case, once a map is approved by the local government, the clerk of the council or board of supervisors transmits the map to the county recorder for recordation. The county recorder has ten days to accept or reject the map for recordation.

COMMENTS

1. **Purpose.** The City of Huntington Beach is sponsoring this measure to help insure that properties are legally and properly converted to condominiums. The city found that at least 122 apartment units in 26 separate buildings were converted to condominiums without its approval. The individual units were then sold to unsuspecting homebuyers. One of the ways that this illegal conversion was facilitated was by obtaining individual parcel numbers on each unit from the county assessor. This bill is intended to prevent a property from being illegally converted to condominiums by making it more difficult for property owners to use the property tax assessment system for real property as a mechanism for obtaining separate assessor parcel numbers or valuations for the individual units.

2. **Key Amendments.** The **August 22** amendment deleted the addition of Section 1174 to the Civil Code. The **July 14** amendment added Section 1174 to the Civil Code related to county recorders and added the amendments to Section 2188.7. The **June 14** amendments deleted the current content of the bill and rephrases and restructures its provisions. These amendments address technical issues outlined in the prior analysis of this bill. Specifically, the amendments:

   - Limit the prohibitions placed on assessors to specific delineated actions. As introduced, it prohibited assessors from "taking any action" on the properties, which was too broad with respect to an assessor's many duties for property tax purposes (e.g., change in ownership, new construction, or decline in value request, etc.).
   - Predicate the ability to proceed with the prohibited actions once a subdivision final map or parcel map has been recorded. As introduced, the assessor could not proceed until a "relevant local authority" certified to the consent of the city or county to the conversion.
   - Modify the type of property to which the provisions apply. As introduced, it applied to a common interest development that consists of less than five units and is a conversion of an existing property. The bill now applies to "existing *residential* structures" (i.e., it would not apply to bare land or commercial, retail, industrial, or business park condos) and is not limited as to the number of units.
   - Relocate the added section of the Revenue and Taxation Code from Chapter 3 of Part 0.5 "**New Construction**" to Chapter 2 of Part 2 "**Legal Description of Lands for Assessment Purposes**." A conversion of a property in and of itself is not considered new construction that would trigger a reassessment of the property.

3. **This bill is intended to create a safeguard against fraudulent condominium conversions by prohibiting an assessor from giving out new assessor parcel numbers or processing a request for a separate assessment.** Proponents of this measure claim that under current practices, if a grant deed is recorded indicating a sale of a portion of a property that is currently under a single assessor parcel number, an assessor will assign a new parcel number to the partitioned portion and is not required to verify that the division of the property was legal by requiring a recorded parcel or subdivision map.

4. **Administration.** Although this measure is written in terms of prohibitions *on the assessor*, proponents of this measure indicate that in terms of actual administration, it is intended to place a burden *on the property owner* to provide the assessor with a copy of the required map. In some cases it is possible that a partition of a property may not require a subdivision or parcel map to be recorded, in this instance, proponents state that the property owner could be referred to the local planning department to obtain written confirmation that a map is not required. Proponents claim that this bill would not place an excessive burden on assessors because (1) cities and counties approve subdivision and

parcel maps, (2) the county recorder accepts or rejects maps, and (3) the subdivider would be required to produce a copy of the required recorded map to the assessor.

5. **Despite efforts to prevent an illegal condo conversion, if an illegal conversion and a subsequent "sale" to a new property owner occurs, then how will this bill affect the subsequent assessment of the property for property tax purposes?** A change in ownership triggers a reassessment of the property sold for property tax purposes. Proponents note that if a sale was illegally made, then this bill would not preclude the assessor from reassessing the property to reflect the change in ownership. The reassessment could be billed under the original assessor parcel number to the former owner, and it would be the responsibility of the seller and buyer to prorate the amount of taxes owing by each party.

Assembly Bill 18 (La Malfa) Chapter 624

Disaster Relief – Homeowners' Exemption

Effective October 6, 2005. In part, amends Section 218 of the Revenue and Taxation Code.

Sponsor: Assembly Member La Malfa

BILL SUMMARY

This bill, in part, allows persons whose homes were damaged or destroyed in various disasters occurring in 2004 and 2005 to retain the homeowners' exemption on their property while they are in the process of rebuilding.

LAW PRIOR TO AMENDMENT

Article XIII, Section 3(k) of the California Constitution exempts from property tax the first $7,000 of the full value of a dwelling when occupied by an owner as his principal residence. This exemption is commonly referred to as the "homeowners' exemption."

Section 218 of the Revenue and Taxation Code details the qualifications for the homeowners' exemption authorized by the constitution. Eligibility is generally continuous once granted. However, if a property is no longer owner-occupied, is vacant or is under construction on the lien date (January 1), the property is not eligible for the exemption for the upcoming tax year.

Relevant to this bill, homes that are totally destroyed on the lien date for a particular fiscal year (that is January 1 for the forthcoming fiscal year that begins July 1) are not eligible for the homeowners' exemption. For example, a home destroyed after January 1, 2005, would continue to be eligible for the exemption on the 2005-06 property tax bill. However, if the home has not been rebuilt and occupied by the next lien date, January 1, 2006, it would not be eligible for the homeowners' exemption on the 2006-07 property tax bill.

AMENDMENT

This bill, in part, amends Section 218 of the Revenue and Taxation Code to provide that dwellings qualified for the homeowners' exemption that were destroyed by specific disasters as noted below will not be disqualified as a "dwelling" or be denied the homeowners' exemption solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

- **Shasta Wildfires.** Homes eligible for the exemption prior to August 11, 2004 that were damaged or destroyed by the wildfires and any other related casualty that occurred in Shasta County in the Governor-declared disaster of August 2004.

- **Southern California Storms, Floods & Mudslides.** Homes eligible for the exemption prior to December 28, 2004 that were damaged or destroyed by the severe rainstorms, floods, mudslides that occurred in Southern California in the Governor-declared disasters of December 2004 and January, February, March and June of 2005.

BACKGROUND

Legislation to extend the homeowners' exemption to temporarily damaged or destroyed homes has been enacted for some disasters as noted in the table below.

Disaster	Year	Legislation
San Joaquin levee break	2004	Stats. 2004, Ch. 792 (SB 1147)
San Simeon earthquake	2003	Stats. 2004, Ch. 792 (SB 1147)
Southern California wildfires	2003	Stats. 2004, Ch. 792 (SB 1147)
Oakland/Berkeley Hills fire	1992	Stats. 1992, Ch. 1180 (SB 1639)
Los Angeles civil riots	1991	Stats. 1992, Ch. 17X (AB 38 X)

COMMENTS

1. **Purpose.** The homeowners' exemption provision of this bill provides some financial relief to persons whose homes were damaged or destroyed by Governor declared disasters occurring in 2004 and 2005.
2. **Key Amendments.** The **August 15** amendment adds double-joining language to two related bills: AB 164 (Nava) for the Shasta County wildfires of August 2004 and SB 457 (Kehoe) for the severe rainstorms, floods and mudslides in Southern California. The **March 3** amendment corrects a typographical error referencing the date of the Shasta wildfire in subdivision (g) of Section 218 from August 2005 to August 2004.
3. **This bill would allow homeowners whose residences were damaged or destroyed as a result of the disasters to retain the exemption on their property while they are in the process of rebuilding their homes.** Homes that are uninhabitable on the lien date (January 1, 2005 and January 1, 2006) are technically ineligible for the exemption for the upcoming fiscal year under current law. Last year legislation was introduced to extend the homeowners' exemption to homes destroyed in the Southern California fires where thousands of homes

were totally destroyed in October and November of 2004 and could not have been rebuilt and occupied by January 1, 2005. This bill was later amended to include two other governor-declared disasters.

4. **Homeowners' Exemption – Disaster Impact.** Board staff has opined that a temporary absence from a dwelling because of a natural disaster, such as a flood or fire, will not result in the loss of the homeowners' exemption for those properties temporarily vacated for repairs. (See Letter To Assessors 82/50, Question G16) However, when a dwelling has been totally destroyed, staff has opined that because no dwelling exists there is no occupancy or possibility of occupancy on the lien date and the property would not be eligible for the exemption even if the property was under construction. (See Property Tax Annotation 505.0019 "Homeowners' Exemption – Disaster Impact") Referenced documents available at www.boe.ca.gov select "Property Taxes."

Assembly Bill 164 (Nava) Chapter 623

Disaster Relief – Homeowners' Exemption

Effective October 6, 2005. In part, amends Section 218 of the Revenue and Taxation Code.

BILL SUMMARY

This bill, in part, allows persons whose homes were damaged or destroyed in various disasters occurring in 2004 and 2005 to retain the homeowners' exemption on their property while they are in the process of rebuilding.

Sponsor: Assembly Member Nava

LAW PRIOR TO AMENDMENT

Article XIII, Section 3(k) of the California Constitution exempts from property tax the first $7,000 of the full value of a dwelling when occupied by an owner as his or her principal residence. This exemption is commonly referred to as the "homeowners' exemption."

Section 218 of the Revenue and Taxation Code details the qualifications for the homeowners' exemption authorized by the constitution. Eligibility is generally continuous once granted. However, if a property is rented, vacant, or is under construction on the lien date (January 1), the property is ineligible for the exemption for the upcoming tax year.

Relevant to this bill, homes that are totally destroyed on January 1, 2005 are not eligible for the homeowners' exemption on the property tax bill for the upcoming fiscal year (2005-06). A home destroyed after January 1, 2005, would continue to be eligible for the exemption on the 2005-06 property tax bill. However if the home has not been rebuilt and occupied by the next lien date, January 1, 2006, it would not be eligible for the homeowners' exemption on the 2006-07 property tax bill.

AMENDMENT

This bill, in part, amends Section 218 of the Revenue and Taxation Code to provide that dwellings qualified for the homeowners' exemption that were destroyed by specific disasters as noted below will not be disqualified as a "dwelling" or be denied the homeowners' exemption solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

- **Shasta Wildfires.** Homes eligible for the exemption prior to August 11, 2004 that were damaged or destroyed by the wildfires and any other related casualty that occurred in Shasta County in the Governor-declared disaster of August 2004.

- **Southern California Storms, Floods & Mudslides.** Homes eligible for the exemption prior to December 28, 2004 that were damaged or destroyed by the severe rainstorms, floods, mudslides that occurred in Southern California in the Governor-declared disasters of December 2004, January, February, March and June of 2005.

BACKGROUND

Legislation to extend the homeowners' exemption to temporarily damaged or destroyed homes has been enacted for some disasters as noted in the table below.

Disaster	Year	Legislation
San Joaquin levee break	2004	Stats. 2004, Ch. 792 (SB 1147)
San Simeon earthquake	2003	Stats. 2004, Ch. 792 (SB 1147)
Southern California wildfires	2003	Stats. 2004, Ch. 792 (SB 1147)
Oakland/Berkeley Hills fire	1992	Stats. 1992, Ch. 1180 (SB 1639)
Los Angeles civil riots	1991	Stats. 1992, Ch. 17X (AB 38 X)

COMMENTS

1. **Purpose.** With respect to the homeowners' exemption portion of the bill, this measure is intended to provide some financial relief to persons whose homes were damaged or destroyed by Governor declared disasters occurring in 2004 and 2005.

2. **Key Amendments.** The **August 17** amendment added double joining language to incorporate the amendments made by AB 18 and SB 457. The **June 15** amendment added the month of March. The **March 8** amendments to Section 218 incorporate suggested amendments made in the prior analysis to rephrase the language related to restricted access to a dwelling because of washed out or damaged roads. While a dwelling may not be physically damaged or destroyed by washed out or damaged roads, it may be temporarily uninhabitable because damage to the roads prevents access to the property.

3. **This bill would allow homeowners whose residences were damaged or destroyed as a result of the August 2004 fire or the winter storms, floods, and mudslides to retain the exemption on their property while they are in the process of rebuilding their homes.** Homes that are uninhabitable on the

lien date (January 1, 2005) are technically ineligible for the exemption for the upcoming fiscal year under current law. Last year legislation was introduced to extend the homeowners' exemption to homes destroyed in the Southern California fires where thousands of homes were totally destroyed in October and November of 2004 and could not have been rebuilt and occupied by January 1, 2005 – just a few months later. This bill was later amended to include two other governor-declared disasters.

4. **Homeowners' Exemption – Disaster Impact.** Board staff has opined that a temporary absence from a dwelling because of a natural disaster, such as a flood or fire, will not result in the loss of the homeowners' exemption for those properties temporarily vacated for repairs. However, when a dwelling has been totally destroyed, staff has opined that because no dwelling exists there is no occupancy or possibility of occupancy on the lien date and the property would not be eligible for the exemption even if the property was under construction. (See Property Tax Annotation 505.0019 "Homeowners' Exemption – Disaster Impact" available at www.boe.ca.gov)

5. **Affected counties:** Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, Shasta and Ventura

   - **Shasta County.** On August 23, 2004, the Governor proclaimed Shasta County to be in a state of emergency due to wildfires that began on August 11.

   - **Southern California.**

     - On January 12, 2005, the Governor proclaimed the County of Ventura to be in a state of emergency as a result of a series of severe rainstorms in that area that commenced on January 6, 2005. Subsequently, on January 15, 2005, the Governor additionally proclaimed the Counties of Riverside, Santa Barbara, Los Angeles, Kern, San Bernardino, Orange and San Diego to be in a state of emergency as a result of storms that began on December 28, 2004. On February 4, 2005, the President of the United States declared a major disaster for California. After the declaration, residents and businesses in the counties of Los Angeles and Ventura that suffered damages and losses could be eligible for federal aid.

     - On March 16, 2005, the Governor proclaimed the counties of Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura to be in a state of emergency due to the continued series of severe rainstorms.

     - In June 2005, additional homes in Southern California were damaged in mudslides that were deemed to occur as a direct result of the winter rainstorms for which the Governor had proclaimed a state of emergency.

6. **Most of the damage took place after January 1.** With respect to the Southern California storms, it appears that homes were not damaged and destroyed until *after* the lien date. Consequently, it appears that these property owners will not lose the homeowners' exemption on their property tax bill for the 2005-06 fiscal year. However, this bill would apply to any home that was not rebuilt and occupied by the next lien date – i.e., January 1, 2006, for the 2006-07 fiscal year.

Assembly Bill 964 (J. Horton) Chapter 699

Commercial Air Carriers

Effective October 7, 2005. Amends Section 441 of, adds Section 401.17 to, and adds and repeals Section 1153.5 of, the Revenue and Taxation Code.

BILL SUMMARY

This bill:

- Establishes an assessment methodology for determining the market value of certificated aircraft owned by commercial air carriers for use in the next six assessment years. *§401.17*

- Establishes a centralized system for commercial air carriers to file one annual property statement with a designated "lead" county for certificated aircraft as well as other personal property and real property fixtures located at airport locations. *§441*

- Establishes a coordinated multi-county audit team to perform mandatory audits of commercial air carriers. §*1153.5*

Sponsor: Air Transport Association

LAW PRIOR TO AMENDMENT

Property Statements. Generally, the valuation of business personal property is based on the acquisition cost of the property. The acquisition cost is multiplied by a price index, an inflation trending factor based on the year of acquisition, to provide an estimate of its reproduction cost new. The reproduction cost new is then multiplied by a percent good factor (from a percent good table) to provide an estimate of the depreciated reproduction cost of the property (reproduction cost new less depreciation). The reproduction cost new less depreciation value becomes the taxable value of the personal property for the fiscal year.

Under existing law, commercial air carriers are required to file property statements for each location in each county in which they own or use real or personal property. The property statement details their property holdings, acquisition costs, and flight and ground data. These statements are the basis for determining the property tax assessment for the upcoming year.

Aircraft Fleets. Certificated aircraft are valued for purposes of property taxation under a "fleet" concept. This means that the basis of the assessed value is not the value of any single aircraft owned by an air carrier, but rather the value of **all** aircraft of each particular fleet type[1] (i.e., all aircraft owned of an identical make and model regardless of age) that is flown into the State. Aircraft fly in and out of the State; no single or particular aircraft remains located in the State on a permanent basis. Under the "fleet" concept, the types of aircraft that have gained situs in California by their entry into revenue service are valued as a fleet and then only an allocated portion of the entire value of the fleet is ultimately taxed to reflect actual presence in California.

Types of Aircraft in the Fleet. Under existing law certificated aircraft must be valued each year at its current fair market value. Existing law is silent as to the method to be used in determining the fair market value of any particular aircraft. However, for assessment years 1998 through 2003, which cover the 1998-99 through 2003-04 fiscal years, Revenue and Taxation Code Section 401.15 detailed a valuation methodology for certificated aircraft. If the assessor followed this methodology, then the resulting value would be presumed to be the fair market value of the aircraft fleet.

Audits. Section 469 of the Revenue and Taxation Code requires assessors to audit the personal property holdings of any property owner with an assessed value of more than $400,000 once every four years. These audits are commonly referred to as “mandatory audits.”

AMENDMENTS

Property Statements – Centralized Reporting. Currently, commercial air carriers file property statements for each location in every county that they own or operate personal property. This bill adds subdivision (l) to Section 441 to instead allow commercial air carriers to file a single consolidated property statement with a designated “lead” county. Newly added Section 1153.5 outlines the process for selecting the lead county for each airline, notifying the airline of the responsible lead county to which it would file its information, and detailing the duties of the lead county (i.e., accept property statement, determine fleet value, transmit unallocated fleet values to other counties for further processing, transmit property statements for non-aircraft personal property assessment to the relevant county, and lead the audit team responsible for the mandatory audit).

Aircraft – Centralized Fleet Valuation. The lead county will calculate the fleet value of the airlines’ certificated aircraft for each make, model, and series. This information will then be transmitted to the other counties. Each individual county will then determine their allocated portion of the fleet based on the flight data for that particular county.

Other Personal Property - Individual County Assessment. The lead county will also transmit the property statement related to an airport location to the situs county.

[1] Types are grouped by make and model. For example, Boeing 737-300s and 737-500s, Boeing 747-400s; Airbus A300-F4-600S; and McDonnnel Douglas DC 10-30s.

Each county will be responsible for valuing personal property and fixtures at their particular airport locations.

Valuation Methodology. This bill adds Section 401.17 to the Revenue and Taxation Code to outline a methodology for determining the value of certificated aircraft for property tax purposes. The value will be based upon the lesser of (1) historical cost basis, as specified, or (2) prices listed in the *Airliner Price Guide*, a commercially-prepared value guide for aircraft, and would be adjusted as specified.

Audits. This bill adds Section 1153.5 to the Revenue and Taxation Code to allow the mandatory audit of a commercial air carrier to be performed by an audit team comprised of staff from one to three counties. The audit will encompass all of the personal property and fixtures of the air carrier located in California. The work performed by the audit team will be made on behalf of each county for which a mandatory audit would otherwise be required under Section 469.

IN GENERAL

Business Personal Property

Personal property used in a trade or business is generally taxable and its cost must be reported annually to the assessor on the business property statement as provided in Revenue and Taxation Code Section 441. Personal property is not subject to the valuation limitations of Proposition 13. It is valued each lien date at current fair market value.

Generally, the valuation of personal property is based on the acquisition cost of the property. The acquisition cost is multiplied by a price index, an inflation trending factor based on the year of acquisition, to provide an estimate of its reproduction cost new. The reproduction cost new is then multiplied by a percent good factor (from a percent good tables) to provide an estimate of the depreciated reproduction cost of the property (reproduction cost new less depreciation). The reproduction cost new less depreciation value becomes the taxable value of the property for the fiscal year.

Certificated Aircraft

Under existing law, all property is taxable unless there is a specific constitutional or statutory exemption for the property. The determination of taxability is generally made as of the lien date, January 1 of each year. Certificated aircraft used by air carriers is subject to taxation when in revenue service in California. Generally, certificated aircraft are commercial aircraft operated by air carriers for passenger or freight service. The term "certificated aircraft" is defined in Revenue and Taxation Code Section 1150 as

> . . . aircraft operated by an air carrier or foreign air carrier engaged in air transportation, as defined in subdivisions (3), (5), (10), and (19) of Section 101 of Title I of the "Federal Aviation Act of 1958" (P.L. 85-726; 72 Stat. 731),

while there is in force a certificate or permit issued by the Civil Aeronautics Board of the United States, or its successor, or a certificate or permit issued by the California Public Utilities Commission, or it successor, authorizing such air carrier to engage in such transportation.

Revenue and Taxation Code Section 401.15 (which expired after the January 1, 2003 assessment year) provided a methodology for valuing certificated aircraft and Section 1152 provides an allocation formula to determine the frequency and the amount of time that an air carrier's aircraft makes contact and maintains situs within a county. Property Tax Rule 202 provides further details in the allocation procedure. Under current law, an allocation ratio is made up of two components: a ground and flight time factor, which accounts for 75% of the ratio, and an arrivals-and-departures factor, which accounts for 25% of the ratio. The sum of these two factors yields the allocation ratio, which is applied to the full cash value of a fleet of a particular type of aircraft operated by an air carrier and, thus, the calculation of the assessed value for that type of aircraft. The sum of the assessed allocated values for each make and model used by an air carrier, results in the total assessed value of the aircraft for that air carrier for a particular county.

As noted above, certificated aircraft are valued for purposes of property taxation under a "fleet" concept. An individual air carrier, Blue Sky Airlines, for example, may operate the following types of aircraft in its overall fleet: Boeing 737-300s and 737-500s, Boeing 747-400s, and Boeing 767-200s and 767-300s. Each of these types of aircraft are considered to be a fleet type. Thus, Blue Sky Airlines may have a fleet of 100 Boeing 737-500s, but only 30 of those aircraft may actually make contact in Sacramento County during the year. For purposes of property taxation in Sacramento County, the full cash value of all 100 of Blue Sky Airline's Boeing 737-500 aircraft is determined and the computed allocation ratio is applied to that value.

The Aircraft Advisory Subcommittee of the California Assessors' Association Standards Committee meets several times a year to determine and recommend values for certificated aircraft. The subcommittee has existed since 1965. The subcommittee recommends values for statewide uniformity, however, prior to the enactment of Section 401.15, assessors in individual counties were not required by law to use the suggested values. Airline representatives are annually given an opportunity to present market evidence relating to extraordinary obsolescence of specific aircraft types to the Aircraft Subcommittee.

BACKGROUND

1998 Settlement Agreement. Prior to January 1, 1999, California law did not provide any specific assessment methodology procedure for valuing certificated aircraft or for valuing the carrier's possessory interest in the publicly owned airport. In 1997-98, a group of counties and airline industry representatives met to resolve issues related to the property taxation of property owned and used by airlines which would be embodied in a written settlement agreement to dispose of outstanding litigation and appeals over the valuation of possessory interest assessments in airports and the valuation of certificated aircraft. The settlement agreement was codified in a three-piece legislative package:

AB 1807 (Stats. 1998, Ch. 86; Takasugi):

- outlined the valuation procedures for certificated aircraft for a six year period
- included the monetary portion of the settlement agreement, and
- included extensive uncodified legislative findings and declarations.

AB 2318 (Stats. 1998, Ch. 85; Knox) specified the assessment methodology for valuing the airlines' possessory interests in publicly owned airports.

SB 30 (Stats. 1998, Ch. 87; Kopp) allowed counties and taxpayers to enter into written settlement agreements granting taxpayers tax credits.

In 2003, **SB 593 (**Ackerman) proposed transferring the assessment jurisdiction of this property from county assessors to the Board of Equalization. This bill was held in the Senate Appropriations Committee. In addition, the **California Performance Review Report** recommended in its 2004 report to the Governor that the Board of Equalization assess aircraft owned by commercial airlines.

COMMENTS

1. **Purpose.** According to the sponsor, the purpose of this bill is to increase efficiency and reduce administrative costs for both the airlines and the government.

2. **Key Amendments.** The **August 22** amendment deleted a specific reference to certain software that is installed in a commercial aircraft. An emerging issue in the assessment of aircraft is a deduction for "embedded software." According to counties, some airlines have sought a 2% to 10% reduction in aircraft values to account for non-taxable software (i.e., a computer program that is not a basic operational program under Section 995 and 995.2), which, to date, has not been granted. There is some disagreement over whether the software installed in the manufacture and outfitting of commercial aircraft that is related to its ordinary, safe and effective operation is “basic operational software” that is fully taxable or whether it should be exempt as non-taxable software. Currently, there is no law or regulation that directly addresses this issue as it applies to aircraft. Some airlines have filed appeals to reduce their assessment by the value of the software in question, but to date have not successfully won an appeal at the local level. As amended July 14, the bill specifically addressed the taxation of this type of software which the August 22 amendment deletes. Thus, absent a specific statute or regulation on this matter as it relates to aircraft, this leaves the taxability of the software programs in question to which the Board, an appeals board, or a court could reach different decisions. The **July 14** amendments add the valuation methodology to be used for the next six assessment years. The

amendments codify an agreement reached between airlines and county assessors relating to the assessment of certificated aircraft and other personal property and fixtures at airport locations that are owned by commercial air carriers. As introduced, the bill would have transferred assessment responsibility from the local county assessor to the Board of Equalization. The **June 1** amendment deleted Senator Ackerman as a co-author. The **May 26** amendment deleted the introduced version of the bill, which would have provided centralized assessment by transferring assessment jurisdiction from each individual county to the state. The amendments instead provided for centralized assessment at the local level by designating a lead county.

3. **The 1998 Settlement Agreement has expired.** The assessment methodology for certificated aircraft codified in 1998 via a settlement agreement between counties and airlines expired after the 2003 assessment year. Commencing with the 2004 assessment year, no assessment methodology has been specified in statute for certificated aircraft.

4. **A delineated valuation methodology for certificated aircraft.** The valuation of aircraft has been a contentious area. This bill would codify a valuation methodology jointly developed and agreed to by the airline industry and a county assessor working group. This bill reflects the legislative portion of the settlement agreement, which once signed would also dispose of pending appeals and future potential lawsuits related to airlines.

5. **Property appraisal is somewhat subjective and opinions of value differ**. As such, this bill will provide certainty and predictability in the valuation of aircraft for both assessors and airlines. Absent a codified methodology, there is no guarantee that the values determined by each individual county assessor would be the same, higher, or lower than they would be without this bill.

6. **The 2005 Settlement Agreement refines the valuation methodology – applying the lessons learned from the 1998 Settlement Agreement.** This bill essentially builds upon the prior methodology. It recognizes the need to distinguish between different types of aircraft: passenger aircraft (main-line jets or regional jets) and freighter aircraft (production or converted). In addition, it recognizes the need to detail the specific calculation of the variable components that was previously lacking. To calculate a reproduction cost new less depreciation value indicator (i.e., the historical cost basis) each variable component is specified; specifically: (1) acquisition cost, (2) price index, (3) percent good factor, and (4) economic obsolescence. With respect to using the *Airliner Price Guide*, a “blue book” value guide for aircraft, the use of values referenced in that guide is specifically delineated and recognizes that airlines generally receive a fleet discount that is not reflected in prices listed in the guide. Assessors indicate that based on a sample of large and small airlines the new methodology in comparison to the prior methodology, produces values that range from 5% - 15% less. To provide a frame of reference, it is estimated that the

assessed value of certificated aircraft alone that is allocated to California totals approximately $10 billion.

7. **The change in the airline industry given the unanticipated events of September 11, 2001, proved the need to modify the methodology to better reflect economic obsolescence**. This bill includes legislative intent language explaining the difficulty of measuring economic obsolescence when a major incident such as September 11 occurs. This bill would establish detailed procedures in determining adjustments for economic obsolescence that would better capture significant changes in market values due to severe changes in the industry's economic condition.

8. **Centralized calculation of the fleet value by the lead county would ensure statewide consistency in the base valuation of the fleet.** Airlines have claimed that even though all of the counties were using the same assessment methodology during the first settlement agreement period, the fleet value calculated by various counties differed. Counties countered that the value discrepancies could be traced to differences in the information reported by the airlines to the counties or differences that have been discovered via an audit of the company. This bill will ensure a uniform statewide assessment by designating a lead county to calculate the fleet value and ensuring that airlines report the same information to every county. Therefore, it should eliminate any discrepancies with aircraft assessment from one county to another and achieve the goal of uniform assessed values for aircraft for any one particular company in each county.

9. **The central assessment of aircraft would result in administrative efficiencies for both airlines and counties.** Commercial airlines must submit duplicative information about their fleet of aircraft to every county for every location in which they operate. Central reporting procedures for the airlines of other personal property to the lead county for subsequent dispersal to the relevant county would similarly reduce the carriers administrative reporting burdens. In addition, this bill eliminates duplication of audits.

Assembly Bill 1099 (Leno) Chapter 193

Active Solar Energy Systems – New Construction Exclusion

Effective September 6, 2005. Amends Section 73 of the Revenue and Taxation Code.

BILL SUMMARY

This bill extends the new construction exclusion for active solar energy systems to improvements constructed through the 2008-09 fiscal year.

Sponsor: California Solar Energy Industries Association and the PV Manufacturers Alliance

LAW PRIOR TO AMENDMENT

The California Constitution, Article XIII A, Section 2(c)(1), grants the Legislature the authority to exclude the construction or addition of any active solar energy system from the definition of assessable new construction.

Section 73 of the Revenue and Taxation Code is the implementing statute for this new construction exclusion. Its provisions are scheduled to sunset on January 1, 2006.

AMENDMENT

This bill extends the new construction exclusion to the 2008-09 fiscal year and provides for an automatic repeal of its provisions on January 1, 2010.

IN GENERAL

Property Tax System. Article XIII, Section 1 of the California Constitution provides that all property is taxable, at the same percentage of “fair market value,” unless specifically exempted, or authorized for exemption, within the Constitution. Article XIII A, Section 2 of the California Constitution defines “fair market value” as the assessor's opinion of value for the 1975-76 tax bill, or, thereafter, the appraised value of property when purchased, newly constructed, or a change in ownership has occurred. This value is generally referred to as the “base year value.” Barring actual physical new construction or a change in ownership, annual adjustments to the base year value are limited to 2% or the rate of inflation, whichever is less. Article XIII A, Section 2 provides for certain exclusions from the meaning of “change in ownership” and “newly constructed” as approved by voters via constitutional amendments.

New Construction. The constitution does not define the term “new construction." Revenue and Taxation Section 70 defines it, in part, to mean:

> Any addition to real property, whether land or improvements (including fixtures), since the last lien date.

Any alteration of land or improvements (including fixtures) since the lien date that constitutes a "major rehabilitation" or that converts the property to a different use.

A major rehabilitation is any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture.

With respect to any new construction, the law requires the assessor to determine the added value upon completion. The value is established as the base year value for those specific improvements qualifying as "new construction" and is added to the property's existing base year value. When new construction replaces certain types of existing improvements, the value attributable to those preexisting improvements is deducted from the property's existing base year value. (R&T Code §71)

New Construction Exclusions. Certain types of construction activity is excluded from assessment as "new construction" via constitutional amendment. Consequently, while these improvements may increase the value of the property, the additional value is not assessable.

Prop	Election	Subject	Code
8	November 1978	Disaster Reconstruction	§70(c)
7	November 1980	Active Solar Energy Systems	§73
23	June 1984	Seismic Safety (Unreinforced Masonry)	§70(d)
31	November 1984	Fire Safety Systems	§74
110	June 1990	Disabled Access Improvements (Homes)	§74.3
127	November 1990	Seismic Safety Retrofitting & Hazard Mitigation	§74.5
177	June 1994	Disabled Access Improvements (All Properties)	§74.6
1	November 1998	Environmental Contamination Reconstruction	§74.7

Overview of Solar Energy New Construction Exclusion

An "active solar energy system" is defined in Section 73 as a system that uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy. Such a system does not include solar swimming pool heaters, hot tub heaters, passive energy systems, or wind energy systems.

An active solar energy system may be used for any of the following:

- Domestic, recreational, therapeutic, or service water heating.
- Space conditioning.
- Production of electricity.
- Process heat.
- Solar mechanical energy.

An active solar energy system includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. "Parts" includes spare parts that are owned by the owner of, or maintenance contractor for, an active solar energy system for which the parts were specifically purchased, designed, or fabricated for installation in that system. Such a system includes only equipment used up to, but not including, the stage of transmission or use of the electricity.

An active solar energy system also includes pipes and ducts that are used *exclusively* to carry energy derived from solar energy. Pipes and ducts that are used to carry *both* energy derived from solar energy and energy derived from other sources may be considered active solar energy system property only to the extent of 75 percent of their full cash value.

An active solar energy system does not include auxiliary equipment, such as furnaces and hot water heaters, that use a source of power *other* than solar energy to provide usable energy. Dual use equipment, such as ducts and hot water tanks, that is used by both auxiliary equipment and solar energy equipment is considered active solar energy system property only to the extent of 75 percent of its full cash value.

Legislative History of Solar Energy New Construction Exclusion

Proposition 7 (SCA 28, Alquist) was approved by voters in 1980 and amended the California Constitution by giving the Legislature the authority to exclude from property tax assessment the construction of active solar energy systems.

SB 1306 (Stats. 1980, Ch. 1245; Alquist) added Section 73 to the Revenue and Taxation Code to implement Proposition 7. Its provisions were operative for five fiscal years - 1981-82 through 1985-86.

AB 1412 (Stats. 1985, Ch. 878; Wyman), extended the exclusion for another five fiscal years - 1986-87 through 1990-91. It also required the Legislative Analysts Office to report to the Legislature by January 1, 1990 on the fiscal and economic effects of the exclusion.

SB 1311 (Greene) in 1989 proposed repealing the exclusion on January 1, 1990. SB 1311 was not heard in any committee.

AB 4090 (Wyman, Alquist) in 1990 proposed extending the exclusion through the 1993-94 fiscal year. AB 4090 passed both houses, but was vetoed by the Governor Deukmejian. The Governor's veto messages stated that he supported efforts to encourage the development of solar energy in California, but the bill would have resulted in millions of dollars of property tax revenue loss to local entities in the high desert region of the state and solar energy income tax credits were otherwise available. At that time, a major commercial project to build solar-electrical generating facilities (SEGS) in the Mojave Desert near Barstow in San Bernardino County was underway by Luz International Ltd.

SB 103 (Stats. 1991, Ch. 28; Morgan) extended the exclusion for three more fiscal years - 1991-92 through 1993-94. SB 103 added a new Section 73 to the code, since the prior Section 73 was repealed by its own provisions on January 1, 1991. However, SB 103 was urgency legislation effective May 14, 1991 and drafted so the continuity of the exclusion would not be affected. SB 103 included a provision to automatically repeal its provisions on January 1, 1995 absent future legislative action. No legislation was enacted prior to the repeal date so the exclusion was not available for five fiscal years (1994-95 through 1998-99) until AB 1755 was enacted as noted below.

SB 1553 (Alquist) in 1994 would have, in part, extended the exclusion indefinitely, however these provisions were amended out of this bill prior to its enactment.

AB 1755 (Stats. 1998, Ch. 855; Keeley) re-established the exclusion for six fiscal years - 1999-2000 through 2004-05. The current exclusion will end on June 30, 2005 and Section 73 will be automatically repealed by its own provisions on January 1, 2006.

SB 116 (Peace) in 1998 would have, in part, also re-established the exclusion. This bill was not enacted.

COMMENTS

1. **Purpose.** To insure that persons who will be installing active solar energy systems will not incur additional property taxes due to those improvements. The author notes that "Solar energy use diversifies California's energy portfolio with zero-emission renewable energy while reducing the overall demand, and therefore price, of natural gas and electricity." The author asserts that incentives such as the property tax exemption encourage consumers to use solar energy

systems, which in turn will help California's environment and reduce the state's reliance on out-of-state energy resources.

2. **Key Amendments.** The May 26, 2005 amendment limits the extension of the new construction exclusion to the 2008-09 fiscal year rather than indefinitely as the bill as introduced proposed.

3. **Except for a five-year hiatus for fiscal years 1994-95 through 1998-99 the exclusion has been available since 1981.** This bill would ensure the continuity of the exclusion.

4. **Related Bills.** Senate Bill 1 (Murray), which proposes to establish the Million Solar Roofs Initiative, the goal of which is to place one million solar energy systems on new or existing residential and commercial buildings by 2018, as amended April 26, would have also extended the sunset date of the new construction exclusion. However, this provision was deleted from the bill on May 16. Senate Bill 1017 (Campbell) would have extended the new construction exclusion to the 2016-2017 fiscal year, but that bill was never heard in a committee.

Assembly Bill 1765 (Committee on Revenue and Taxation) Chapter 519

Timber Yield Tax – Repeal Obsolete Provisions

Effective October 4, 2005 but operative January 1, 2006. Among other things repeals Sections 38203.5 and 38907 of the Revenue and Taxation Code.

BILL SUMMARY

This bill, with respect to property taxes, deletes obsolete date specific laws.

Sponsor: Board of Equalization

LAW PRIOR TO AMENDMENT

The Timber Yield Tax Law, for the 1977–78 fiscal year and each fiscal year thereafter, imposes a tax on every timber owner with respect to the harvesting of timber or felled or downed timber at specified rates. The Timber Yield Tax Law disallows, subject to certain exceptions, any adjustment of yield tax rates for the years 1979, 1980, or 1981 to reflect any portion of the property tax rate levied on the unsecured roll for the 1978–79 tax year, as provided, and requires that the Controller certify for a specified period the amount necessary to restore the deficient allocations, plus the amount necessary to bring the Timber Tax Reserve Fund to $5,000,000. The specific provisions of that law providing for the restoration of any deficient allocations for the Timber Tax Reserve Fund were previously repealed.

AMENDMENT

This bill deletes these obsolete provisions relating to the adjustment of yield tax rates for 1979, 1980, and 1981, and the certification by the Controller of the amount necessary to restore certain deficient allocations.

BACKGROUND

Revenue and Taxation Code Sections 38203.5 and 38907 were added following the adoption of the Timber Yield Tax in the late 1970's in order to transition from the ad valorem property taxation of timber to the Timber Yield Tax.

The purpose of Section 38203.5 was to avoid the public expense and taxpayer confusion that would result from collecting additional taxes for the 1979 year while at the same time refunding excessive taxes for the 1980 year where, in many instances, comparable amounts would be collected from and refunded to the same taxpayers. Additionally, with respect to the 1981 year, it similarly avoided the expense and confusion that would result from reducing the 1981 yield tax rate and increasing the 1981 reserve fund tax rate by identical and hence, offsetting percentages.

Section 38907 required that the Controller certify for a specified period the amount necessary to restore the deficient allocations plus the amount necessary to bring the Timber Tax Reserve Fund required by Section 38905 to $5 million. Section 38905, which provided for the restoration of any deficient allocations for the Timber Tax Reserve Fund, was repealed in 1983 (Stats. 1982, Ch. 1058) and Section 38902, which provided for the Timber Tax Reserve Fund, was repealed in 1985 (Stats. 1984, Ch. 678).

Comment

Purpose. This is a housekeeping measure to repeal sections of law related to the initial implementation of the Timber Yield Tax. The transition from the ad valorem property taxation of timber to the Timber Yield Tax has been fully implemented and these statutes are obsolete.

Senate Bill 49 (Machado) Chapter 245

Williamson Act – Cancellations

Effective September 22, 2005. Amends Sections 51203, 51283, 51283.4, and 51283.5 of the Government Code.

BILL SUMMARY

This bill, with respect to an assessor's determination of a property's current fair market value for purposes of calculating a Williamson Act cancellation fee, requires the assessor to re-evaluate the initial valuation when either the Department of Conservation or the property owner believes the valuation is inaccurate if additional information is submitted that the assessor believes may have a material effect on the valuation of the property.

Sponsor: Department of Conservation

LAW PRIOR TO AMENDMENT

Pursuant to the Williamson Act, existing law provides incentives to landowners to conserve agricultural and open space land by allowing them to sign voluntary contracts with counties and cities, which enforceably restrict their land to agriculture, open space, and compatible uses for the next 10 years. The law automatically renews Williamson Act contracts each year, so that the term is always 10 years into the future. In return for these voluntary contracts, county assessors adjust downward the assessed value of Williamson Act contracted lands to reflect the value of their use as agriculture or open space for purposes of property taxation. The landowner may cancel a Williamson Act contract by giving "notice of nonrenewal," which stops the automatic annual renewals to allow the contract to expire over the next 10 years.

However, the law also permits under certain conditions for a landowner to immediately cancel the contract, which in part requires, that he or she pay the state a cancellation fee that is equal to 12.5% of the property's unrestricted fair market value. The county assessor determines the property's current unrestricted fair market value for the purpose of calculating the amount of the cancellation fee.

Beginning January 1, 2005, the law established a new procedure for the landowner to challenge the assessor's estimation of the property's unrestricted fair market value for purposes of determining the cancellation fee and additionally allowed the Department of Conservation (DOC) to challenge the assessor's value.

Specifically, the law allows the DOC or the landowner to request that the assessor make a "formal review" of its original determination and the assessor then either revises the valuation or confirms the accuracy of the original valuation. The "formal review" is the only administrative procedure available to challenge a cancellation valuation. The new provisions also authorize the DOC and the landowner to agree on a cancellation valuation that is different than the assessor's. In addition, the assessor may recover the costs of the formal review from the party (DOC or landowner) that initiated it.

Previously, valuation challenges were heard and decided by the local assessment appeals board or to the local county board of supervisors[2] meeting in the capacity of the assessment appeals board and only the landowner could file an appeal. The DOC had no legal standing to appeal the assessor's value determination to the assessment appeals board.

AMENDMENT

This bill amends Government Code Section 51203 to require that the assessor formally review his or her initial valuation when requested by the DOC or landowner if the requesting party submits additional information that the assessor believes may have a material effect on the valuation of the property.

This bill also makes various nonsubstantive amendments to correct typographical errors and adds cross-references to other statutes.

COMMENTS

1. **Purpose.** This bill is a cleanup measure to last year's bill instituting the new valuation challenge procedures - SB 1820 (Machado, Stats. 2004, Ch. 794), which was sponsored by the Department of Conservation. An August 25, 2005 letter from Senator Machado printed in the Senate Daily Journal addresses the inadvertent drafting errors made in the initial legislation that this bill corrects.

2. **Key Amendments.** The **June 27** amendment requires that re-evaluation requests be made by certified mail and amends Government Code Section 51283 to exclude providing specified information relevant to the valuation of the property to the landowner or DOC upon their written request if it was received by a third party. The **June 13** amendment requires the requesting party to provide additional information that substantiates a recalculation of the property and gives the assessor the discretion to determine whether the information warrants a review. As introduced, the assessor had no such discretion, and if a written request was made, a review would be mandatory.

[2]There are 19 counties in California where the board of supervisors also performs the duties of the county board of equalization: Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Imperial, Inyo, Kings, Lake, Mendocino, Modoc, Napa, Plumas, San Benito, Sierra, Tehama, Trinity, Tuolumne

Senate Bill 457 (Kehoe) Chapter 622

Disaster Relief – Homeowners' Exemption

Effective October 6, 2005. In part, amends Section 218 of the Revenue and Taxation Code.

BILL SUMMARY

This bill, in part, allows persons whose homes were damaged or destroyed in the severe rainstorms, floods and mudslides in Southern California to retain the homeowners' exemption while they are in the process of rebuilding.

Sponsor: Senator Christine Kehoe

LAW PRIOR TO AMENDMENT

Article XIII, Section 3(k) of the California Constitution exempts from property tax the first $7,000 of the full value of a dwelling when occupied by an owner as his or her principal residence. This exemption is commonly referred to as the "homeowners' exemption."

Section 218 of the Revenue and Taxation Code details the qualifications for the homeowners' exemption authorized by the constitution. Eligibility is generally continuous once granted. However, if a property is no longer owner-occupied or becomes vacant or is under construction on the lien date (January 1), the property is ineligible for the exemption for the upcoming tax year.

Relevant to this bill, homes that are totally destroyed on January 1, 2005 are not eligible for the homeowners' exemption on the property tax bill for the upcoming fiscal year (2005-06). A home destroyed after January 1, 2005, would continue to be eligible for the exemption on the 2005-06 property tax bill. However if the home has not been rebuilt and occupied by the next lien date, January 1, 2006, it would not be eligible for the homeowners' exemption on the 2006-07 property tax bill.

AMENDMENT

This bill, in part, amends Section 218 of the Revenue and Taxation Code to provide that dwellings qualified for the homeowners' exemption prior to December 28, 2004 and that were damaged or destroyed by severe rainstorms, floods, mudslides or the accumulation of debris in the disaster declared by the Governor during specified months will not be disqualified as a "dwelling." Consequently, these homes will not be denied the homeowners' exemption solely on the basis that the dwelling was temporarily damaged, destroyed or being reconstructed by the owner, or temporarily uninhabitable as a result of restricted access to the property due to floods, mudslides, the accumulation of debris, or washed out and damaged roads.

BACKGROUND

For some prior disaster situations, legislation has been enacted to extend the homeowners' exemption to temporarily damaged or destroyed homes.

Disaster	Year	Legislation
San Joaquin levee break	2004	Stats. 2004, Ch. 792 (SB 1147)
San Simeon earthquake	2003	Stats. 2004, Ch. 792 (SB 1147)
Southern California wildfires	2003	Stats. 2004, Ch. 792 (SB 1147)
Oakland/Berkeley Hills fire	1992	Stats. 1992, Ch. 1180 (SB 1639)
Los Angeles civil riots	1991	Stats. 1992, Ch. 17X (AB 38 X)

COMMENTS

1. **Purpose.** With respect to the homeowners' exemption portion of the bill, the author is sponsoring this measure to provide some financial relief to persons whose homes were damaged or destroyed in the severe winter storms and mudslides.

2. **Key Amendments.** The **August 25** amendment added additional months of coverage: February, March and June. It also added double-joining language to two related bills: AB 18 (La Malfa) for the Shasta County wildfires of August 2004 and AB 164 (Nava) for the severe rainstorms, floods and mudslides in Southern California. The **July 11** amendment added the provisions related to Section 218.

3. **This bill allows homeowners whose residences were damaged or destroyed as a result of the winter storms and mudslides to retain the exemption on their property while they are in the process of rebuilding their homes.** Homes that are uninhabitable on the lien date (January 1, 2005) are technically ineligible for the exemption for the upcoming fiscal year under current law. Last year legislation was introduced to extend the homeowners' exemption to homes destroyed in the Southern California fires where thousands of homes were totally destroyed in October and November of 2004 and could not have been rebuilt and occupied by January 1, 2005 – just a few months later. This bill was later amended to include two other governor-declared disasters.

4. **Homeowners' Exemption – Disaster Impact.** Board staff has opined that a temporary absence from a dwelling because of a natural disaster, such as a flood

or fire, will not result in the loss of the homeowners' exemption for those properties temporarily vacated for repairs. However, when a dwelling has been totally destroyed, staff has opined that because no dwelling exists there is no occupancy or possibility of occupancy on the lien date and the property would not be eligible for the exemption even if the property was under construction. (See Property Tax Annotation 505.0019 "Homeowners' Exemption – Disaster Impact" available at www.boe.ca.gov)

5. **Affected counties:** Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura.

   - On January 12, 2005, the Governor proclaimed the County of Ventura to be in a state of emergency as a result of a series of severe rainstorms in that area that commenced on January 6, 2005. Subsequently, on January 15, 2005, the Governor additionally proclaimed the Counties of Riverside, Santa Barbara, Los Angeles, Kern, San Bernardino, Orange and San Diego to be in a state of emergency as a result of storms that began on December 28, 2004. On February 4, 2005, the President of the United States declared a major disaster for California. After the declaration, residents and businesses in the counties of Los Angeles and Ventura that suffered damages and losses could be eligible for federal aid.

   - On March 16 2005, the Governor proclaimed the counties of Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura to be in a state of emergency due to the continued series of severe rainstorms.

   - In June 2005, additional homes in Southern California were damaged in mudslides that were deemed to occur as a direct result of the winter rainstorms for which the Governor had proclaimed a state of emergency.

6. **Most of the damage took place <u>after</u> January 1.** In this particular instance, it appears that homes were not damaged and destroyed until *after* the lien date. Consequently, it appears that these property owners will not lose the homeowners' exemption on their property tax bill for the 2005-06 fiscal year. However, this bill would apply to any home that was not rebuilt and occupied by the next lien date – i.e., January 1, 2006, for the 2006-07 fiscal year.

Senate Bill 555 (Committee of Revenue and Taxation) Chapter 264

Property Tax Omnibus Bill

Effective January 1, 2006. In part, amends Sections 63.1, 69.5, 75.12, 408.2, 469, 534, 755, 756, 11316, 11336 of, and adds Sections 75.23 and 1641.5 to, the Revenue and Taxation Code.

BILL SUMMARY

This property tax omnibus bill, in part:

- Provides, for purposes of the grandparent-grandchild change in ownership exclusion, that a son-in-law or daughter-in-law of the grandparent that is a stepparent to the grandchild need not be deceased in meeting a condition that “all of the parents” of the grandchild, as defined, must be deceased. *§63.1*

- Expressly provides that the claims filed by taxpayers for the parent-child change in ownership exclusion and base year value transfers for seniors and the disabled are not public documents and not subject to public inspection. *§63.1, §69.5, §408.2*

- Allows the "builders' exclusion" from supplemental assessment for the completion of new construction to be automatically granted to newly completed single family residences located in a residential subdivision, as specified. *§75.12*

- Immediately terminates a property tax exemption on a property when it is sold if the new property owner is not otherwise eligible for an exemption. *§75.23*

- Eliminates mandatory personal property audits of exempt entities. *§469*

- Allows the tax bill to serve as the notice of the taxpayer's right to appeal the assessment, so long as the tax bill itself contains the notice of the taxpayer's appeal rights. *§534*

- Adds state assessed electrical generation facilities to the list of properties which must be assigned to a specific tax rate area rather than the countywide tax rate area when preparing the Board roll of state assessed property. *§755, §756*

- Provides that when the hearing officer decisions on assessment appeals constitute the final decision of the county assessment appeals board, the county board does not have to provide a (redundant) approval of that final decision. *§1641.5*

- Deletes obsolete references to a “declaration of intent to petition for reassessment” on a private railroad car assessment with the Board. *§11316, §11336*

Grandparent - Grandchild Exclusions &
Claim Form Confidentiality
Revenue & Taxation Code Sections 63.1, 69.5, 408.2

Sponsor: Board of Equalization

LAW PRIOR TO AMENDMENT

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

Article XIII A, Sec 2 of the California Constitution and Section 63.1 of the Revenue and Taxation Code exclude from the definition of change in ownership transfers of certain property between parents and children occurring on or after November 6, 1986. Specifically, transfers between parents and children of:

- principal places of residences and
- the first $1 million of real property other than principal residences.

The parent-child change in ownership exclusion may be extended to the transfer of real property from grandparents to their grandchild if **all of the parents** of that grandchild **who qualify as the children of the grandparents** are **deceased** as of the date of transfer. The grandparent-grandchild exclusion is available to transfers of property occurring on or after March 27, 1996.

The existing statutory eligibility for a parent-child transfer extends to transfers between stepparents and their stepchildren, between mothers-in-law or fathers-in-law and their sons-in-law or daughters-in-law and to children adopted before the age of 18. This expands the possible transfers of property between people who will be eligible for the parent-child change in ownership exclusion. However, for the grandparent-grandchild exclusion, it limits eligibility since all persons who qualify as a "child" of the grandparent must be deceased. As a result, there is an unintended consequence for the grandparent-grandchild exclusion in that if a child has a stepparent that never remarried after the death of their parent, they are ineligible for the grandparent-grandchild exclusion because the stepparent is still considered a "child" of their grandparent and therefore not "all of the parents" of the grandchild that are children of the grandparent are deceased. There are situations where the stepparent has no relationship with, or is estranged from, the stepchild such as where the parent remarries when the child is an adult or where the stepparent is incarcerated. In these cases, because this stepparent is still living, the grandchild is precluded from receiving the exclusion on their grandparent's property.

Claims

Revenue and Taxation Code Section 408.2 provides, that except as provided in Section 451 (relating to property statements) and Section 481 (relating to change in ownership statements) any information and records in the assessor's office which are required by law to be kept or prepared by the assessor, other than homeowners' exemptions, are public records and shall be open to public inspection.

In claiming either the parent-child change in ownership exclusion pursuant to Section 63.1 or the base year value transfer provisions of Section 69.5 for persons over the age of 55 years, taxpayers must provide their social security numbers on the claim form they file with their local county assessor. Social security numbers are the basis by which claims for these two tax benefits are monitored on a statewide basis by the Board of Equalization. With respect to the parent-child exclusion, taxpayers are limited to claiming the exclusion on the first one million dollars of real property transferred excluding principal places of residences. With respect to a base year value transfer, a taxpayer may claim the transfer only once in a lifetime, with one exception, if the person becomes severely and permanently disabled subsequently to being granted, as a claimant, the property tax relief.

Existing law is silent with respect to the confidentiality of claims filed by taxpayers pursuant to Sections 63.1 and 69.5.

AMENDMENTS

A. Grandparent-Grandchild Exclusion

This bill amends subdivisions (a) and (c) of Section 63.1 to provide that the existence of a stepparent whose relationship to the grandparent in question is as a daughter-in-law or son-in-law (i.e., the widowed spouse of the grandparent's child) would not disqualify the grandchild from receiving the change in ownership exclusion.

B. Claims

Parent-Child Exclusion. This bill adds subdivision (i) to Section 63.1 to expressly state that a claim filed for the parent-child change in ownership exclusion is not a public document and is not subject to public inspection. In addition, it expressly provides that certain persons may inspect the claim: namely, the transferee and transferor or their respective spouse, the legal representative of the transferee and the transferor, and the executor or administrator of the transferee's or transferor's estate.

Base Year Value Transfers. This bill adds subdivision (n) to Section 69.5 to expressly state that a claim filed for a base year value transfer is not a public document and is not subject to public inspection. In addition, it expressly provides that certain persons may inspect the claim: the transferee and the transferor or their respective spouse, the legal representative of the transferee and transferor, and the executor or administrator of the transferee's or transferor's estate.

This bill also amends Section 69.5(f)(1) to delete the need to provide the name and social security number of a spouse that was a record owner of the original property at the time of its sale. This requirement is the unintended result of the lack of triple joining language in three bills that amended Section 69.5 in 1990 which caused the extraneous phrase "was a record owner of the original property at the time of its sale or" to be in this section of code.

Cross Reference Additions. This bill amends Section 408.2 to add cross-references to Sections 63.1 and 69.5.

Legislative Findings and Declarations. As required by Section 3 of Article I of the California Constitution, this bill makes Legislative findings to demonstrate the interest protected by providing that these claim forms are not public documents and the need for protecting that interest:

> Claims filed under Section 63.1 or Section 69.5 contain taxpayer sensitive personal information, including social security numbers, dates of birth, home addresses, home telephone numbers, marital status, adoption status, financial matters, and medical information. Notwithstanding Section 3 of Article I of the California Constitution, county assessors have a responsibility and an obligation to safeguard from public access a taxpayer's personal information with which it has been entrusted.
>
> The right to privacy is a personal and fundamental right protected by Section 1 of Article I of the California Constitution and by the United States Constitution. All individuals have a right of privacy in information pertaining to them.
>
> This state has previously recognized, in Section 408.2 of the Revenue and Taxation Code, the importance of protecting the confidentiality and privacy of an individual's personal and financial information contained in homeowners' exemption claims, property statements, and change of ownership statements filed with county assessors for property tax purposes.
>
> In addition to the right of privacy, there is a need to protect from public disclosure personal information due to the growing prevalence and debilitating nature of identity theft.
>
> It is not the intent of this measure to make confidential that a particular property has received a property tax benefit pursuant to Section 63.1 or Section 69.5 of the Revenue and Taxation Code, or the amount of the benefit, but only to protect the personal information contained in the claim form. In addition, the Legislature further finds that in determining the fiscal impact resulting from either of these provisions, county assessors may provide aggregated data on property in their counties that have been extended these property tax benefits.

IN GENERAL

Under existing law, real property is generally reassessed to its current fair market value whenever there is a "change in ownership." (Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60 - 69.7) However, under certain circumstances property owners may avoid reassessment of a particular property by way of either a change in ownership exclusion or a base year value transfer.

Parent-Child Exclusion. Proposition 58, approved by voters on November 4, 1986, added subdivision (h) to Section 2 of Article XIII A of the California Constitution, to provide that the term "change in ownership" does not include the purchase or transfer between parents and their children of a principal residence and the first $1 million of the full cash value of all other real property. Proposition 193 on the March 1996 ballot amended this section to apply the exclusion to transfers of real property from grandparents to grandchildren when all the parents of the grandchildren who qualify as children of the grandparents are deceased as of the date of transfer. By avoiding reassessment to current market value, children can preserve the Proposition 13 protected value of property acquired from their parents (or vice versa) and the property taxes on the property will remain the same.

Revenue and Taxation Code Section 63.1 provides the statutory implementation for Propositions 58 and 193. To receive the change in ownership exclusion, Section 63.1 requires the taxpayer to file a claim form with the assessor. Relevant to this bill, subdivision (d) of Section 63.1 requires that the social security number of each eligible transferor be provided on the claim form. Social security numbers are the basis by which the $1 million limitation is monitored on a statewide basis. County assessors report quarterly to the Board all claims filed for the exclusion other than those involving a principal residence. Properties transferred after the $1 million assessed value ceiling is reached are subject to reassessment at current market value.

Base Year Value Transfers. Proposition 60, approved by the voters in November 1986, amended Section 2 of Article XIII A of the California Constitution to allow persons over the age of 55 to sell a principal place of residence and transfer its base year value to a replacement principal place of residence within the same county. This allows eligible homeowners to avoid paying property taxes on their new home based on its current market value and instead preserve their Proposition 13 protected value of their prior home by transferring it to their new home. Proposition 90, which was passed by the voters in November 1988, extended these provisions to a replacement dwelling located in another county under limited conditions. Proposition 110, approved by the voters in June 1990, extended these provisions to severely and permanently disabled persons of any age.

Revenue and Taxation Code Section 69.5 provides the statutory implementation for Propositions 60, 90 and 110. It details the provisions by which persons over the age of 55 years and disabled persons may transfer, subject to many conditions and limitations, the base year value of their primary residence to a newly acquired replacement residence. This property tax relief is generally allowed only once in a lifetime. To receive the base year value transfer, Section 69.5 requires the taxpayer to file a claim form with the assessor. Relevant to this bill, subdivision (f) of Section 69.5 requires that the social security number of each claimant be provided on the claim form. Social security numbers are the basis by which the once in a lifetime benefit is monitored on a statewide basis. County assessors report quarterly to the Board all claims for base year value transfers.

Spouses of Claimants. As previously noted, the base year value transfer is generally a once in a lifetime benefit. To qualify Section 69.5(b)(7) requires that a "claimant" may not have previously received a base year value transfer. Section 69.5(g)(9) provides that the spouse of the claimant is deemed to have used their once in a lifetime benefit if the spouse is a record owner of the replacement dwelling. However, Section 69.5 (f)(1) incorrectly requires that the claim form include the social security number of any spouse of the claimant who was a record owner of the original property at the time of its sale in addition to the social security number of any spouse that is a record owner of the replacement dwelling. To properly administer Section 69.5(g)(9) the name and social security number of a spouse of a claimant is necessary only if he or she is a record owner of the replacement dwelling.

COMMENTS

1. **Purpose.** To protect the disclosure of a taxpayer's social security number and to ensure that the broad definition of "parent" for purposes of the parent-child change in ownership exclusion does not, as an unintended consequence, overly restrict eligibility for grandparent-grandchild change in ownership exclusion.

2. **Key Amendments.** This provision was added by the **August 15** amendment and was previously contained in SB 599 (Machado).

3. **Claim Confidentiality.** The confidentiality of these forms is not expressly provided for in law. This bill would provide clarity to tax practitioners as well as interested parties that these documents are not public records subject to public inspection. Because claims for these property tax relief benefits contain taxpayer sensitive personal information, including social security numbers, dates of birth, home addresses, home telephone numbers, marital status, adoption status, financial matters, and medical information, the Board-prescribed claim forms include a statement that they are not subject to public inspection, although it is not expressly provided for in law. Recently, a county received a request for a copy of all claim forms filed under Section 69.5. The request was made under the Public Records Act, which caused the staff to evaluate whether, contrary to the statement on the claim form, these records must be provided to the inquiring party. Ultimately, the Board staff opined that these claims are exempt from public disclosure pursuant to the Information Practices Act, which was enacted to limit the dissemination of personal information. (It should be noted that the county was able to provide the inquiring party with the information it was seeking to

derive from the individual claim forms, which was the revenue impact of intercounty base year value transfers, by providing aggregate data.)

4. **This bill balances the general public's right to information and the individual's right to privacy.** As noted in the uncodified intent language, it is not the intent of this measure to make confidential that a particular property has received a property tax benefit pursuant to Section 63.1 or Section 69.5 of the Revenue and Taxation Code, or the amount of the benefit, but only to protect the personal information contained in the claim form. Additionally, in determining the fiscal impact resulting from either of these provisions, county assessors may provide aggregated data on property in their counties that have been extended these property tax benefits.

5. **Names Listed on Claim Form - Technical Correction**. In 1990, three bills amended Section 69.5 (Statutes 1990, Chapters 902, 1487, and 1494). An amendment to Section 69.5(f)(1) made by Chapter 902 (AB 3723) was chaptered out thereby creating an inconsistency between the definition of claimant in subdivision (g)(9) and the claimant's information required to be reported on the claim form in Section 69.5(f)(1). This bill amends Section 69.5(f)(1) to restore the change made by AB 3723 that was inadvertently chaptered out.

Supplemental Assessments

Revenue and Taxation Code Section 75.12 and 75.23

Sponsor: California Assessors' Association

LAW PRIOR TO AMENDMENT

Existing property tax law requires property to be reassessed whenever there is a change in ownership or the completion of new construction. A "supplemental assessment" provides a mechanism for picking up a change in assessed value as of the date it occurs. The increase (or decrease) in assessed value is reflected in a prorated assessment (the supplemental assessment) that covers the portion of the fiscal year (July 1-June 30) remaining after the date of change in ownership or completion of new construction. For changes in ownership or completed new construction occurring between January 1 and May 31, two supplemental assessments are issued. The first covers the portion of the current fiscal year remaining after the date of the event; the second covers the ensuing fiscal year in its entirety. An increase in assessed value results in a supplemental tax bill and a decrease in assessed value results in the issuance of a refund check. These supplemental assessments are entered into the "supplemental roll" and contain properties that have changed ownership or had new construction completed as opposed to the regular "assessment roll" prepared each fiscal year which contains all property in the county.

Builders' Exclusion. Revenue and Taxation Code Section 75.12 provides what is commonly referred to as a "builders' exclusion" that exempts from supplemental assessment the completion of some new construction. The builders' exclusion only applies to the initial supplemental assessment for the completion of new construction and does not preclude the reassessment of construction on the assessment roll on the lien date following the date of completion of construction or to any other supplemental assessments on the property, such as the change in ownership related to the initial acquisition of the property. Typically, the exemption is extended to homes in new subdivisions as well as custom homes built by contractors on speculation. To qualify, the property owner must notify the assessor within 30 days of beginning construction that the property will be held for resale and will not be rented, leased, occupied or otherwise used until it is sold. A claim form is generally available from the assessor's office to request the builders' exclusion from supplemental assessment.

Sale of Property Receiving a Tax Exemption. Existing law exempts from property tax specified types of property or property owned by specified taxpayers. Typically, these exemptions include the welfare exemption (religious, hospital, charitable, and scientific uses of property) and the church exemption. In addition, most property owned by governmental entities, schools, and colleges are exempt from property tax. Persons eligible for one of the many property tax exemptions available may immediately receive the exemption as of the date they acquire the property via the supplemental assessment roll. However, if the exempt owner subsequently sells the property, the exemption does not immediately terminate. Revenue and Taxation Code Section 75.20 provides that any supplemental assessment levied should not affect an exemption which had been granted the property for either the current roll or the roll being prepared. Rather, the new property owner may enjoy a windfall since the property would continue to hold the prior owner's tax exempt status for as long as eighteen months, depending upon the date of acquisition.

AMENDMENT

Builders' Exclusion. This bill amends Section 75.12 of the Revenue and Taxation Code to provide that a property owner is not required to file a claim with the assessor to receive the builders' exclusion, if the owner's property meets all of the following conditions:

- The property is subdivided into five or more parcels in accordance with the Subdivision Map Act
- A map describing the parcels has been recorded.
- Zoning regulations that are applicable to the parcels or building permits for the parcels require that, except for parcels dedicated for public use, single-family residences will be constructed on the parcels.
- This bill makes the builders' exclusion automatic for builders that meet the above criteria. However, builders that do not meet the criteria, may still receive the exclusion by filing a claim with the assessor.

Sale of Property Receiving a Tax Exemption. This bill adds Section 75.23 to the Revenue and Taxation Code to provide that notwithstanding Section 75.20, if a property undergoes a change in ownership and the property was receiving an exemption on the regular assessment roll (either the current roll or the roll being prepared), then the exemption will not apply to that property as of the date of the change in ownership if the new property owner does not otherwise qualify for that particular exemption. This bill excludes from these provisions property for which the only exemption being granted on the property is the homeowners' exemption.

In practical application, this means that a person who purchases a property that was previously exempt from property tax, would receive a supplemental assessment that would reflect full taxation of the property as of the date of purchase. The increase in assessed value resulting from the change in ownership upon which the supplemental assessment would be calculated would be the difference of zero (to reflect the prior tax exemption) and the new assessed value of the property.

COMMENTS

1. **Purpose.** To provide (1) an automatic extension of the builder's exclusion in new residential subdivisions and (2) ensure equity in the property tax exemption process. Property owners may file a claim for the builder's exclusion on raw land prior to the initial subdivision of the property and construction of any homes. Consequently, after the subdivision of the property into individual parcels it is possible that a supplemental assessment is incorrectly made on some of the parcels within the subdivision. This requires costly roll corrections to reverse the supplemental assessment.
2. **Claim forms not required – automatic exclusion for residential subdivisions.** Effectively, in a residential subdivision that is owned by a single property owner (such as a builder-developer of a subdivision), the assessor would not issue a supplemental assessment for newly completed homes on lots within the subdivision.

Mandatory Audits – Exempt Entities
Revenue and Taxation Code Section 469

Sponsor: California Assessors' Association

LAW PRIOR TO AMENDMENT

Personal property used in a trade or business is generally taxable, and its cost must be reported annually to the assessor on the business property statement as provided in Revenue and Taxation Code Section 441. Organizations that own personal property but are also eligible for a property tax exemption must also file a business property statement. Typically, these exemptions include the welfare exemption (religious, hospital, charitable, and scientific uses of property) and the church exemption.

Revenue and Taxation Code Section 469 requires county assessors to audit, at least once every four years, the books and records of any taxpayer engaged in a profession, trade, or business, if the taxpayer has assessable trade fixtures and business tangible personal property valued at $400,000 or more. These statutorily required audits are commonly referred to as "mandatory audits."

Existing law also provides that an organization may be audited with respect to its eligibility for the property tax exemption (on its real and personal property). Specifically, Sections 254.5 and 254.6 provide that the assessor or the Board may audit the organization to ensure that it is eligible for the welfare exemption.

AMENDMENT

This bill amends Section 469 of the Revenue and Taxation Code to exclude from the requirement to audit the property holdings of a taxpayer that is otherwise fully exempt from property taxation under other provisions of law.

COMMENTS

Purpose. To better allocate limited staff resources. Currently, assessors are required to audit nonprofit organizations with large personal property holdings even though they are exempt from paying any property taxes on those holdings. This bill provides that a fully tax exempt property does not require an audit beyond the determination that the exemption is appropriately granted (i.e., once it is determined that the entity is exempt, a mandatory audit of its books and records once every four years is not necessary).

Assessment Appeal Right Notification – Escape Assessments

Revenue and Taxation Code Section 534

Sponsor: California Assessors' Association

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 531.8 requires that prior to an escape assessment being levied a taxpayer must receive a "Notice of *Proposed* escape assessment."

Section 534 requires that when the assessor actually makes the escape assessment, to which the taxpayer was previously notified on the notice of *proposed* escape assessment, the notice must include appeal rights information, as specified.

Section 1605 provides that in some cases, receipt of the tax bill, which also includes appeal rights information, suffices as notice.

AMENDMENT

This bill amends Section 534 to harmonize the provisions of that section related to assessment appeal rights notification to Section 1605, which allows the tax bill to serve as the escape assessment notification as well as provide the information concerning appeal rights. Prior to receiving a tax bill, the taxpayer would have received the "notice of proposed escape assessment."

COMMENTS

Purpose. Harmonizes Sections 534 and 1605 of the Revenue and Taxation Code which provides that receipt of the tax bill suffices as the formal notice of an escape assessment. All taxpayers would have also previously received the notice of proposed escape assessment. Previously, taxpayers could have received up to three notices related to the single escape assessment.

Board Roll Preparation

Revenue and Taxation Code Section 755 and 756

Sponsor: Board of Equalization

LAW PRIOR TO AMENDMENT

Under current law, incremental growth in property tax revenues from most state assessed property occurring after 1987 is shared on a "countywide" basis. This revenue is distributed to nearly all governmental agencies and school entities in the county in proportion to each entity's share of the county's total ad valorem property tax revenues.

Under the countywide system, each county has one general “countywide tax rate area” to which the assessed value of state assessed property is assigned. However, the law provides for certain exceptions to this process. For some state assessed properties, the resulting property tax revenues are allocated only to the governmental agencies and school entities in the specific tax rate area where the property is sited rather than being deposited in the countywide pool. These exceptions are:

- Electrical generation facilities pursuant to Section 100.9
- Three specific state assessed properties pursuant to Section 100(i), (j) and (k)
- Property of regulated railway companies pursuant to Section 100.1
- Nonunitary property pursuant to Section 755(a) and 756(a)

Sections 755 and 756 require the Board to transmit the assessment roll and roll estimates to the county auditor by certain dates annually. These sections of law specify that the assessed value of the above listed properties (with the exception of electrical generation facilities) are to be assigned to a specific tax rate area rather than the general countywide tax rate area. This ensures that the revenues from these properties flow to the proper local governments.

AMENDMENT

This bill amends Revenue and Taxation Code Sections 755 and 756 to add electrical generation facilities as defined in Section 100.9 to the types of properties that must be assigned to a particular tax rate area rather than the countywide tax rate area on the Board roll.

BACKGROUND

Effective January 1, 2003, Chapter 57 of the Statutes of 2002 (AB 81) transferred the assessment of certain electrical generation facilities to the Board and added Section 100.9 to the Revenue and Taxation Code to require that the value of these electric generation facilities be allocated to the specific tax rate area where the facility is located, rather than the countywide tax rate area prescribed by Section 100 for other state assessed property.

COMMENTS

1. **Purpose.** This is a technical amendment to ensure that the laws related to the preparation of the Board roll properly reference all properties for which the Board must assign state assessee values to a particular tax rate area rather than the countywide tax rate area.

2. **Key Amendments.** This provision was added by the **August 15** amendment and was previously contained in SB 501 (Machado).

3. **Codifies Existing Practices.** It is the current administrative practice of the Board to prepare the roll in this manner in order to properly implement Section 100.9.

Hearing Officer Decisions
Revenue and Taxation Code Section 1641.5

Sponsor: California Association of Clerks and Election Officials

LAW PRIOR TO AMENDMENT

Existing property tax law authorizes a county to appoint an assessment hearing officer to conduct hearings on specified taxpayer assessment protest applications and to make recommendations on these applications to the county board of equalization or county assessment appeals board. Section 1640 provides that the appeals board is bound by the decision of the hearing officer, unless pursuant to Section 1641, the board of supervisors adopts a resolution providing that the appeals board is not bound to the hearing officer's recommendation and the taxpayer or assessor may request a full hearing before the appeals board. Under either circumstance, the appeals board receives a copy of the hearing officer's report and conclusions.

AMENDMENT

This bill adds Section 1641.5 to the Revenue and Taxation Code to authorize a county board of supervisors to adopt a resolution providing that the assessment hearing officer's decision constitutes the final administrative action by the county board of equalization or county assessment appeals board.

COMMENTS

Purpose. Provides that the appeals board does not have to approve a hearing officer's decision in those counties where the county board of supervisors has already adopted a resolution providing that a decision by a hearing officer on an assessment appeal constitutes the final decision of the county assessment appeals board.

Private Railroad Car Tax
Revenue and Taxation Code Section 11316 and 11336

Sponsor: Board of Equalization

LAW PRIOR TO AMENDMENT

Prior to January 1, 2002, there was a two step process to file an appeal of a private railroad car assessment with the Board. The first step was to file a “declaration of intent” to appeal, which was due on or before August 21. The second step was to file the actual appeal, which was due on or before September 20. In 2002, this appeals process was simplified to eliminate the first step and instead require a taxpayer to file an appeal within a specific number of days. (See Revenue and Taxation Code Sections 11338 and 11339)

AMENDMENT

This bill amends Revenue and Taxation Code Sections 11316 and 11336 to delete obsolete references to a "declaration of intent to petition for reassessment" still found in miscellaneous sections of law.

COMMENTS

1. **Purpose.** This is a housekeeping measure that deletes obsolete references to the prior two step appeals process.

2. **Key Amendments.** This provision was added by the **August 15** amendment and was previously contained in SB 747 (Machado).

3. **Related Legislation.** In 2000, the Board sponsored SB 2170 (Stats. 2000, Ch. 647) to eliminate the two step appeals process for state assessees. In 2001, the Board sponsored SB 1181 (Stats. 2001, Chap. 407) to make conforming changes to the appeals process for Private Railroad Car taxpayers.

Senate Bill 565 (MIgden) Chapter 416

Registered Domestic Partners – Change In Ownership Exclusion

Effective January 1, 2006. Amends Section 62 of the Revenue and Taxation Code.

BILL SUMMARY

This bill excludes from the definition of change in ownership any transfer of property between registered domestic partners.

Sponsor: Senator Carole Migden

PRIOR TO AMENDMENT

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)*

A transfer of property between registered domestic partners is generally considered a change in ownership triggering reassessment of that property. However, there are a few exceptions:

- Property Tax Rule 462.040 provides that in the case where property is owned by persons, including 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 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.

Section 62 of the Revenue and Taxation Code provides numerous definitional exclusions from change in ownership for a variety of ownership interest transfers in real property and legal entities.

AMENDMENT

This bill adds subdivision (p) to Section 62 to provide that, commencing on January 1, 2006, change in ownership does not include any transfer 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 creating a trust.

This bill also includes a statement of legislative findings and declarations.

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 a husband and wife satisfied the three elements for a change in ownership, but chose to specifically exclude transfers between husbands and wives 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, three other exclusions were statutorily provided as noted below.

Bills	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) – (i)
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

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-<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	Change in Ownership Exclusion	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:

Bills	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. Also, in instances where the same person continues to own or reside in the property (such as the interspousal exclusion, placing property in a trust, creating a life estate, or purchasing the land under ones mobilehome), those exclusions have been statutorily authorized.

COMMENTS

1. **Purpose.** "To guarantee equality for all Californians, regardless of gender or sexual orientation, and to further the state's interests in protecting Californians from the potentially severe economic and social consequences of abandonment, separation, the death of a partner, and other life crises." This bill also includes detailed legislative findings and declarations.

2. **Key Amendments.** The **August 25** amendment added a cross reference to the legal definition of registered domestic partners found in Section 297 of the Family Code. The **June 20** amendment deleted the uncodified provisions of this bill which expressly provided that recent amendments to Property Tax Rules 462.040 and 462.240 are retroactive to July 1, 2003.

3. **Current law provides an interspousal change in ownership exclusion.** Section 63 provides that a change in ownership shall not include any interspousal transfer. This bill provides a similar exclusion for transfers between registered domestic partners. Persons eligible to register with the Secretary of State as domestic partners includes persons of the same sex in a committed relationship, as well as committed opposite-sex relationship where one partner is 62 years or older, that share a common residence.

4. **This bill would eliminate the reassessment trigger when interests between registered domestic partners are transferred.** 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 (typically the date of death or termination of the partnership). The percentage of the property subject to reappraisal depends 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, no reappraisal would occur and the property owner would continue to pay the same amount of property taxes on their property thereby preserving the property's Proposition 13 protected value.

5. **Proponents note that the fundamental argument to Proposition 13 was to ensure persons would not be "taxed" out of their home because they could not afford the property taxes based on its unrealizable current market value.** Property taxes at that time were based on current market values. While a home may increase in value, that increase in value is unrealizable unless the home is sold.

6. **Modifying "Change in Ownership" definitions.** Opponents of this measure state that a constitutional amendment is necessary to create the change in ownership exclusion. While Proposition 13 provided that a "change in ownership" would trigger reassessment, the term was not defined. Statutory language defines the term "change in ownership" and details various transfers that are included or excluded from "change in ownership." Therefore, statutory amendments could, arguably, modify those definitions initially established such as this bill proposes. In addition, proponents note that the interspousal exclusion was statutorily created (it was not amended into the constitution until 1986), and this bill would enact a similar provision.

TABLE OF SECTIONS AFFECTED

SECTIONS		BILL NUMBER	CHAPTER NUMBER	SUBJECT
Revenue & Taxation Code				
§62	Amend	SB 565	Ch. 416	Registered Domestic Partners
§63.1	Amend	SB 555	Ch. 264	Claim Forms – Public Records Exclusion Grandparent-Grandchild Exclusion
§69.5	Amend	SB 555	Ch. 264	Claim Forms – Public Records Exclusion
§73	Amend	AB 1099	Ch. 193	Active Solar Energy Systems
§75.12	Amend	SB 555	Ch. 264	Supplementals – Builders' Exclusion
§75.23	Add	SB 555	Ch. 264	Immediate Exemption Termination Upon Sale
§218	Amend	SB 547	Ch. 622	HOX - Disaster Relief
§218	Amend	AB 164	Ch. 623	HOX - Disaster Relief
§218	Amend	AB 18	Ch. 624	HOX - Disaster Relief
§327.5	Add	AB 14	Ch. 281	Condominium Conversions – Parcel Numbers
§401.17	Add	AB 964	Ch. 699	Commercial Air Carriers – Valuation Methodology
§408.2	Amend	SB 555	Ch. 264	Public Record Exceptions
§441	Amend	AB 964	Ch. 699	Commercial Air Carriers – Consolidated Property Statement
§469	Amend	SB 555	Ch. 264	Mandatory Audits – Exempt Entities
§534	Amend	SB 555	Ch. 264	Assessment Appeal Right Notification
§755	Amend	SB 555	Ch. 264	Board Roll Preparation
§756	Amend	SB 555	Ch. 264	Board Roll Preparation

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SECTIONS		BILL NUMBER	CHAPTER NUMBER	SUBJECT
Revenue and Taxation Code				
§1153.5	Add Repeal	AB 964	Ch. 699	Commercial Air Carriers – Audit Team
§1641.5	Add	SB 555	Ch. 264	Hearing Officer Decisions
§2188.7	Amend	AB 14	Ch. 281	Condominium Conversions – Separate Assessment
§2823	Amend	AB 14	Ch. 281	Condominium Conversions – Separate Valuation
§11316	Amend	SB 555	Ch. 264	Private Railroad Cars - Petitions
§11336	Amend	SB 555	Ch. 264	Private Railroad Cars - Petitions
§38203.5	Repeal	AB 1765	Ch. 519	Timber Yield Tax - Housekeeping
§38907	Repeal	AB 1765	Ch. 519	Timber Yield Tax - Housekeeping
Government Code				
§51203	Amend	SB 49	Ch. 245	Williamson Act - Cancellation
§51283	Amend	SB 49	Ch. 245	Williamson Act - Cancellation
§51283.4	Amend	SB 49	Ch. 245	Williamson Act - Cancellation
§51283.5	Amend	SB 49	Ch. 245	Williamson Act - Cancellation