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
2007

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Assembly Bill 62 (Nava) Chapter 224

Disaster Relief – Fires

Effective September 21, 2007. Amends Sections 218 of, and adds Sections 195.107, 195.108, 195.109, 195.120, 195.121, 195.122, 195.123, 195.124, and 195.125 to, the Revenue and Taxation Code.

BILL SUMMARY

This bill, among other things, allow persons whose homes were destroyed in specified wildfires to retain the homeowners' exemption on their property while they are in the process of rebuilding.

This bill also provides one-year state reimbursement to backfill any property tax revenue loss resulting from assessment reductions related to these wildfires.

Sponsor: Assembly Member Nava

LAW PRIOR TO AMENDMENT

Homeowners' Exemption. 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 on or before January 1, 2007 is not eligible for the homeowners' exemption on the 2007-08 property tax bill. [1]

Disaster Relief - Property Reassessment for Property Owners. Section 170 of the Revenue and Taxation Code provides that property taxes may be reduced following a disaster, misfortune, or calamity in those counties where the board of supervisors has adopted an ordinance authorizing these provisions. These provisions apply to both governor-declared disasters and site specific disasters such as a home fire. Disaster relief is provided by allowing the county assessor, under specified conditions, to reassess the property as of the date of the disaster to recognize the loss in a property's market value. The loss in value must be at least $10,000. The prior assessed value of the damaged property is reduced in proportion to the loss in market value; the new reduced value is used to calculate a

[1] A home destroyed after January 1, 2007, would continue to be eligible for the exemption on the 2007-08 property tax bill. However, if the home has not been rebuilt and occupied by the next lien date, January 1, 2008, it would not be eligible for the homeowners' exemption on the 2008-09 property tax bill.

pro-rata reduction in taxes. The affected property retains its lower value, with reduced taxes, until it is restored, repaired, or reconstructed. Generally, taxpayers have up to 12 months to file a request for reassessment.

Disaster Relief - State Reimbursement for Local Governments. Additionally, legislation is frequently enacted to fully reimburse local governments for one year's property tax revenue loss associated with Section 170 reductions in assessment.

AMENDMENT

Homeowners' Exemption. This bill allows persons whose homes were destroyed in specified wildfires to retain the homeowners' exemption on their property while they are in the process of rebuilding. The wildfires included are noted below.

> **The Day Fire and The Shekell Fire.** Add subdivision (k) to Section 218 to provide that a dwelling qualified for the homeowners' exemption prior to September 4, 2006, and subsequently damaged or destroyed by wildfires and any other related casualty in Ventura County will continue to be eligible for the homeowners' exemption.
>
> **The Angora Fire.** Add subdivision (m) to Section 218 to provide that a dwelling qualified for the homeowners' exemption prior to June 24, 2007, and subsequently damaged or destroyed by wildfires and any other related casualty in El Dorado County will continue to be eligible for the homeowners' exemption.
>
> **The Zaca Fire.** Add subdivision (n) to Section 218 to provide that a dwelling qualified for the homeowners' exemption prior to July 2, 2007, and subsequently damaged or destroyed by wildfires and any other related casualty in Santa Barbara and Ventura County will continue to be eligible for the homeowners' exemption.

State Reimbursement. This bill also provides state reimbursement for property tax revenue losses due to Section 170 disaster relief reassessments for the 2006-07 fiscal year for these particular wildfires. Specifically, it adds provisions to the Revenue and Taxation Code to outline the process and timeline for the affected counties, the Department of Finance, and the State Controller to follow for each particular fire.

BACKGROUND

Special purpose legislation has been enacted in recent years to provide that dwellings that were destroyed by specific disasters, as noted in the table 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.

Disaster	Year	Legislation
Northern California Storms, Floods & Mudslides	2006	Stats. 2006, Ch. 396 (AB 1798)
Northern California Storms, Floods & Mudslides	2006	Stats. 2006, Ch. 897 (AB 2735)
Shasta Wildfires	2005	Stats. 2005, Ch. 623 (AB 164)
Southern California Storms, Floods & Mudslides	2005	Stats. 2005, Ch. 624 (AB 18)
Southern California Storms, Floods & Mudslides	2005	Stats. 2005, Ch. 622 (SB 457)
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 author is sponsoring this measure to provide some financial relief to persons whose homes were damaged or destroyed as a result of various fires and provide property tax revenue backfill to affected local governments.

2. **Key Amendments.** The **August 27 amendments** added provisions for the Zaca Fire in Santa Barbara and Ventura Counties. **The July 20 amendments** made nonsubstantive amendments and added a co-author. **The July 3 amendments** added provisions for the Angora Fire in El Dorado County. **The June 12 amendments** double joined this bill to SB 38, a bill that provides identical disaster relief provisions for the fires occurring in Riverside County. These amendments will prevent any chaptering out issues should both bills be enacted. **The May 15 amendments** limited the scope of this bill to fires occurring in Ventura County. As introduced, this bill would have also applied to fires occurring in Riverside County; however, provisions for these fires are contained in SB 38 (Battin). The **April 9 amendments** made a nonsubstantive change and added co-authors.

3. **Proclamations.** Related to this bill, five proclamations of a state of emergency have been issued related to various wildfires affecting four counties as noted below:

   The Day Fire. On September 24, 2006, the Governor issued a proclamation of a State of Emergency for Ventura County due to fires that commenced on September 4, 2006.

   The Shekell Fire. On December 4, 2006, the Governor issued a second proclamation for Ventura County for fires that commenced on December 3, 2006.

   The Angora Fire. On June 25, 2007, a proclamation was issued for **El Dorado County** for the Angora fire that started on June 24, 2007.

   The Zaca Fire. On August 3, 2007, the Governor issued a proclamation for Santa Barbara County for the Zaca Fire that commenced on July 4, 2007.

On August 19 the Governor issued a proclamation for Ventura County for the Zaca Fire.

4. **This bill would allow homeowners whose residences were damaged or destroyed as a result of these fires 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) are technically ineligible for the exemption for the upcoming fiscal year under current law.

5. **The Board advises county assessors that damaged homes may keep the exemption but totally destroyed homes may not.** The 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 Tax."

6. **Related Bills.** SB 38 (Ch. 222, Battin) makes similar amendments to Section 218 but is limited to fires occurring in Riverside County. SB 114 (Ch. 223, Florez) makes similar amendments to Section 218 for damages incurred in those counties that were declared by the Governor to be in a state of emergency due to severe freezing conditions that commenced January 11, 2007.

Assembly Bill 297 (Maze) Chapter 225

Freeze – Newly Planted Trees Exemption

Effective September 21, 2007. Amends Section 211 of the Revenue and Taxation Code.

BILL SUMMARY

This bill restarts the four-year exemption period for newly planted fruit and nut trees damaged by the January 2007 freeze that are currently in their exemption phase.

Sponsor: Assembly Member Maze

LAW PRIOR TO AMENDMENT

Article XIII, Section 3(i) of the California Constitution exempts from property tax fruit and nut trees planted in orchard form until four years after the season first planted. The land upon which the trees are planted remains subject to tax. A similar exemption exists for grapevines, except that the exemption period is for three years.

Revenue and Taxation Code Section 211 restates the exemption provisions of the constitution and additionally provides that any tree severely damaged during the exemption period as a result of the December 1990 and December 1998 freezes restarts the exemption for another four years. Any tree pruned to the trunk or bud union to establish a new shoot as a replacement is considered "severely damaged."

In addition to the exemption for newly planted orchards provided by Section 211, Property Tax Rule 131 provides that the four-year exemption period will also apply to individual trees when (1) a tree is newly planted within an existing orchard (i.e., a replacement tree) or (2) a tree that had reached commercial production requires grafting causing another non-producing period before it will bear fruit or nuts.

Once the exemption period expires and the trees are subject to tax, Section 53 provides the initial base year value of the trees for purposes of Proposition 13 will be the full cash value of the trees as of January 1 on the first year they are taxable.

AMENDMENT

This bill amends Section 211 to restart the four-year exemption period for trees that, while they were still in their exemption period, were so severely damaged by the January 2007 freeze that they required pruning to the trunk or bud union to establish a new shoot as a replacement for the damaged tree.

IN GENERAL

Property Taxation of Non-Williamson Act Land. Agricultural property is subject to the assessment rules of Proposition 13, in that it retains its base year value until new construction or a change in ownership takes place. Inflationary increases in assessment are limited to no more than two percent a year. Trees and vines are subject to property tax as "living improvements" and a base year value is established for them once the exemption period for new plantings ends. In addition to the typical costs of land preparation and planting, an investment in an orchard or vineyard is a long-term venture with a period of several years before any cash flow is realized.

Both types of crops require several years to reach maturity, and the land is committed to that specific use with little flexibility to other uses. In recognition of this fact, the law exempts fruit and nut bearing trees from taxation during a portion of their immature life. The taxation of the trees is synchronized with the trees ability to produce a sellable crop. (The *land* in which the trees are planted remains subject to taxation, it is only the *trees* that are temporarily exempt.)

Property Taxation: California Land Conservation Act (Williamson Act). Under the Williamson Act, landowners may enter into contracts with participating cities and counties to restrict their lands to agricultural or open-space uses. The contract must be for a minimum term of 10 years, and contracts are automatically renewed each year unless other action is taken. In exchange for entering into these contracts, the land and any living improvements (trees and vines) are valued according to their income earning ability. The valuation is based on a statutory formula that capitalizes the income that the land is capable of producing from its agricultural use. The law also provides that each year, the property will be assessed at the lowest of the factored base year value, the Williamson Act value, or the current fair market value. In this way, landowners participating in the Williamson Act program are guaranteed that their land value will never be assessed at a greater value than noncontracted land.

BACKGROUND

Similar legislation was enacted for two other severe freezes occurring in December of 1990 and 1998.

Freeze	Type	Bill Number
December 1990	Trees & Grapevines	AB 1771 (Harvey) Stats. 1991, Ch. 1034
December 1998	Trees	SB 1014 (Poochigian) Stats. 1999, Ch. 291

AB 1771 added the provision starting a new exemption period for fruit or nut bearing trees or grapevines, damaged by the December 1990 freeze. AB 1771 was sponsored by the Kern County Assessor in an effort to provide relief to farmers who had vineyards and orchards still within the initial exemption period for newly planted vines and trees when the December 1990 freeze hit. There were 10 days of freezing temperatures in December of 1990 which resulted in tree losses in Kern, Tulare, and Fresno Counties.

SB 1014 was sponsored by the California Citrus Mutual. Grapevines were not included in this bill because they were not damaged by the 1998 freeze.

COMMENTS

1. **Purpose.** The author is sponsoring this measure in an effort to restart the exemption period for trees damaged by the January 2007 freeze.
2. **These Trees Are Currently Exempt.** This bill would merely extend the exemption period for trees that are already exempt from tax. It follows the basic tax policy, that trees will not be subject to taxation until they reach maturity.
3. **This Bill Does Not Cover Williamson Act Properties – But They Effectively Receive Property Tax Relief Automatically.** The provisions of Section 211 relate to the establishment of the base year value of trees for purposes of a Proposition 13 assessment (i.e., factored base year value). Property subject to a

Williamson Act contract is assessed at the lowest of three values: the factored base year value, the Williamson Act value, or the current fair market value. This measure would not affect the assessed value of those orchard lands affected by the freeze where the Williamson Act value is still the lowest of the three determined values. However, in those orchards, the assessed value would, generally, nevertheless be reduced the following year. This is because the Williamson Act value is determined according to a capitalization of income method. It will take some time for these damaged trees to recover to their natural state before the freeze and then more time to mature and start producing harvestable crops. Since a damaged orchard would produce a reduced or possibly no income, this loss in productive capacity would result in a reduced assessment for the trees on the subsequent lien date (assuming that all other valuation factors remain constant from the previous year).

4. **Related Bills.** SB 114 (Ch. 223, Florez) enacts various disaster relief provisions related to the freeze, including local government backfill for property tax revenue losses associated with assessment reductions due to the freeze under Section 170 and the retention of the homeowners' exemption on any home that may have been damaged.

Assembly Bill 402 (Ma) Chapter 450

Parent-Child Change in Ownership Exclusion – Foster Children
Residential Co-operative Housing Projects – Ownership Reporting

Effective January 1, 2008. Amends Section 63.1 of, and adds Section 408.8 to, the Revenue and Taxation Code.

BILL SUMMARY

This bill:

- Expands the parent-child change in ownership exclusion to include transfers between foster parents and foster children, as specified.
- Requests that certain residential co-operative housing projects annually report ownership information to county assessors.

Sponsor: Foster Children Provision – Assembly Member Ma

Co-ops Provision - California Assessors' Association

Parent-Child Change in Ownership Exclusion - Foster Children

Revenue and Taxation Code Section 63.1

LAW PRIOR TO AMENDMENT

Change in Ownership. Under existing property tax law, real property is reassessed to its current fair market value after a "change in ownership." (Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60 - 69.5)

Parent-Child Exclusion. Article XIII A, Section 2(h) of the California Constitution provides that certain transfers of property between parents and their children, as defined by the Legislature, are not a change in ownership.

The Legislature, in Section 63.1 of the Revenue and Taxation Code, defined child, in pertinent part, to mean any child born of the parent or parents, or any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years. Because a "foster child" does not meet the statutory definition of a "child" for purposes of this exclusion, a transfer between a foster parent and a foster child is not eligible for the parent-child change in ownership exclusion.

AMENDMENT

Foster Children. This bill adds to the definition of child any foster child of a state-licensed foster parent, if that child was not, because of a legal barrier, adopted by the foster parent before the child aged out of the foster care system. The relationship between a foster child and foster parent would be deemed to exist until terminated by death. However, for purposes of a transfer that occurs on the date of death, the relationship would still be deemed to exist on the date of the death. *§63.1 (c)(3)(E)*

Claim Form Requirements. The claim form filed to request the change in ownership exclusion is to include:

- a certified copy of the court decision regarding the foster child status of the individual, and
- a certified statement from the appropriate county agency stating that the foster child was not, because of a legal barrier, adopted by the foster parent or foster parents.

In addition, if requested, legal substantiation of these two items may be required. *§63.1(d)(1)(E)*

Foster Parent to Foster Child to Biological Parent Transfers Prohibited. In the case of a transfer of a principal residence from a foster child to the child's biological parent, an exclusion is not available if the transferor child received that principal residence from a foster parent that was previously granted the foster parent-foster child exclusion. *§63.1(a)(1)(B)*

COMMENTS

1. **Purpose.** This provision is sponsored by the author to expand the parent-child exclusion to transfers between foster children and foster parents. The author notes that this bill would encourage and recognize the life long bonds between foster children and foster parents and may help reduce the number of foster youth who age out of the foster care system without a place to live.
2. **Amendments.** The **August 20 amendments** substituted the phrase "child was not eligible for adoption" for "child was not, because of a legal barrier, adopted" throughout the text. The **August 1 amendment** double joined this bill to SB 1045 which also proposes amendments to Section 63.1. The **July 17 amendments** reflect a suggestion made in the prior analysis to ensure that a transfer that occurs on the date of the foster parent's death is eligible for the exclusion. Previously, the bill stated that the foster parent-foster child relationship would be deemed to exist until terminated by death. However, this phrasing required modification since many transfers would likely occur on the date of death, for example, when a home is left to a foster child upon the foster parent's death via a will.

Residential Co-operative Housing Projects – Consolidated Ownership Report
Revenue and Taxation Code Section 480.8

LAW PRIOR TO AMENDMENT

Change in Ownership - Properties with Common Areas or Facilities. Revenue and Taxation Code Section 60 provides a general definition of "change in ownership" which is a transfer of present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

In addressing the practical application of a change in ownership of a real estate project with common areas or facilities, Section 65.1(b) specifies if there is a change in ownership of a unit or lot, then only that particular unit or lot and a share in the common area is to be reappraised. These provisions apply to:

- cooperative housing corporations,
- community apartment projects,
- condominiums,
- planned unit developments, or
- other residential subdivision complexes with common areas or facilities.

Section 65.1(b) also requires that the project owner must ensure that the resulting increase in property taxes is applied to the tenant-shareholder, lessee, or occupant of the individual unit or lot that changed ownership to prohibit the project owner from prorating the increased taxes among the owners of the other units or lots in the project.

Cooperative Housing Corporations. In addition, subdivision (i) of Section 61 expressly provides that a transfer of stock in a cooperative housing corporation is a change in ownership requiring reassessment of the property.

Change in Ownership Reporting. Section 480 requires that whenever there is a change in ownership of real property, the property owner must file a "Change in Ownership Statement" (COS). However, there is no penalty for failing to file the statement unless the assessor prompts the property owner to file the statement by making a written request. If requested, the taxpayer has 45 days to file the COS or otherwise incur penalties as specified. *(§482)*

AMENDMENT

Consolidated Ownership Report. This bill requires the owners of a cooperative housing corporation, community apartment project, condominium, planned unit development, or other residential subdivision complex with common areas or facilities in which units or lots are transferred without the use of recorded deeds, to file an annual ownership report, after a written request, with the county assessor by February 1 of each year.

The ownership report is to include:

- The name and mailing address of each owner, stockholder, or holder of an ownership interest in the property.
- The situs address, including the number, of each unit or lot.
- A copy of the stock certificate, or other document that evidences an interest in the unit or lot. Once a copy has been provided, it is not necessary to be provided in subsequent ownership reports.

- The date that an ownership interest in the property was acquired and the acquisition price of that interest.

Individual COS. There is no penalty if the consolidated ownership report is not filed. However, in that event, the assessor would send a COS to every owner, tenant-shareholder, or occupant of each individual unit or lot in the residential project and the failure to file that statement would result in a penalty to the owner of each individual unit or lot that fails to independently file the COS. If the assessor sends an individual COS, then a notice is to be included with the statement informing the occupants of the unit to forward the statement to the owner or shareholder of the unit in the case where the occupant is not the owner.

COMMENTS

1. **Purpose.** The California Assessors' Association is sponsoring this provision to establish a practical and cost effective method for the discovery of changes in ownership of housing co-ops. The annual report is necessary so that they can properly administer the property tax laws. It is likely that some of these units are avoiding reassessment where the individuals fail to independently report their purchase of the unit to the assessor within 45 days as required by law.
2. **Amendments.** The **August 1 amendments** specified that when it is necessary to mail individual change in ownership statements to each unit, then a notice is to be included with the statement informing the occupants of the unit to forward the statement to the owner or shareholder of the unit in the case where the occupant is not the owner.
3. **Transfers without Grant Deeds are Difficult to Discover.** The primary discovery method of property that has changed ownership is the recorded grant deed. In stock co-operative housing developments, which are usually referred to as "co-ops," individual units are transferred by means of stock certificates. These certificates are not recorded with the county recorder and may or may not be recorded with the Secretary of State. Consequently, discovery of these changes in ownership by conventional means can be problematic. Assessors generally rely on direct contact with the co-op association or management.
4. **Some Co-ops do not cooperate.** Los Angeles County reports that they have nearly 1,600 units in over 50 co-ops. Eleven of these co-ops, comprising a total of 500 units, have refused to provide ownership information. Consequently, the assessor is having difficultly properly administering the property tax laws. It is likely that some of these units have changed ownership, which the assessor has difficulty discovering in a practical and cost effective manner without the association managements' co-operation.
5. **Residential Co-ops Only.** The consolidated ownership report only applies to residential real estate projects with co-operative forms of ownership. Other real estate projects, such as shopping centers, industrial parks, or other commercial or industrial land subdivision complexes with common areas or facilities, are not required to file the annual ownership report.

Assembly Bill 1020 (Runner) Chapter 277

Change in Ownership – Right of Redemption Period

Effective January 1, 2008. Adds Section 62.11 to the Revenue and Taxation Code.

BILL SUMMARY

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

Sponsor: County Recorders Association of California

LAW PRIOR TO AMENDMENT

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

Revenue and Taxation Code Section 60 defines change in ownership to mean a transfer of present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Thus for a transfer to meet this definition it must have <u>all</u> three of the following characteristics:

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

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

(a) Mortgage or deed of trust foreclosed by **judicial action is a sufficient change in ownership only**:

(1) **After the period of redemption has passed and property has not been redeemed**, or

(2) Upon redemption when title vests in the original debtor's successor in interest.

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

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

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

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

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

AMENDMENT

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

BACKGROUND

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

COMMENTS

1. **Purpose.** This bill clarifies that the recordation of a certificate of sale does not constitute a change in ownership for property tax purposes. The author's office notes that nothing in the law expressly exempts "certificates of sale" from change in ownership and that logically the change in ownership does not occur until after the foreclosure sale, when the redemption period expires and the trustee records a trustee's deed, perfecting the purchaser's title to the property. In addition, it is intended to create uniformity in the document transfer tax administered by county recorders by ensuring that tax is collected when the trustee's deed on a foreclosed property is recorded. According to the author, this bill will prevent property owners from making unnecessary payments and County Recorders from making unnecessary refunds.

2. **Amendments.** The July 17 amendments moved the provisions of this bill from Section 62 to a new, stand-alone section to avoid any chaptering out issues or the need for double joining provisions as other bills this session also propose to amend Section 62.

3. **This bill expressly states in the Revenue and Taxation Code that the recordation of a certificate of sale, as specified, is not a change in ownership.** This is consistent with existing laws and regulations.

Assembly Bill 1042 (Spitzer) Chapter 195

Assessment Appeal Application-Electronic Filing

Effective January 1, 2008. Amends Section 1603 of the Revenue and Taxation Code.

BILL SUMMARY

This bill expressly provides in law for assessment appeal applications to be filed electronically provided they are accompanied with an authenticated electronic signature.

Sponsor: Orange County Board of Supervisors

LAW PRIOR TO AMENDMENT

Assessment Appeals. Section 1603 of the Revenue and Taxation Code provides that taxpayers may appeal the assessed value of their property by filing an application with the county board of equalization or county assessment appeals board. If a taxpayer is appealing a value that is already on the assessment roll on the lien date, January 1, the appeal application must be filed during the "regular assessment filing period" which in most counties is between July 2 and November 30. However, in 10 counties, the appeals period ends earlier on September 15. These counties send out annual notices of values to taxpayers earlier in the year to give adequate notice as to assessed value upon which their annual property tax bill will be based. If a taxpayer is appealing a supplemental or escape assessment, the appeal application must be filed within 60 days after the date of the notice of the supplemental or escape assessment.

Signature Certification. Subdivision (f) of Section 1603 requires that the appeal application be signed under the penalty of perjury that the information submitted on the application is true, correct, and complete to the best of applicant's knowledge and belief. Persons authorized to sign the appeal application includes:

- the owner of the property or a person having a direct economic interest in paying taxes on the property,
- an agent authorized by the applicant, or
- a California licensed attorney.

Electronic Signatures. Government Code Section 16.5 provides that in any written communication with a public entity, in which a signature is required or used, a digital signature may be used provided it meets certain requirements. A "digital signature" is an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.

The use of a digital signature has the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:

- It is unique to the person using it.
- It is capable of verification.
- It is under the sole control of the person using it.
- It is linked to data in such a manner that if the data are changed, the digital signature is invalidated.
- It conforms to regulations adopted by the Secretary of State.

AMENDMENT

This bill adds subdivision (g) to Section 1603 of the Revenue and Taxation Code to provide that the clerk of a county board of equalization may accept an electronically filed appeal application containing an electronic signature if all of the following criteria are met:

- The application complies with all other requirements for filing the application.
- The electronic signature is accompanied by the certification described in subdivision (f) related to affirming under the penalty of perjury that the information is true, correct, and complete.
- The electronic signature is authenticated in a manner that is approved by the county board of supervisors, which manner may include, but is not limited to, the use of personal identification numbers the clerk has assigned to applicants.

COMMENTS

1. **Purpose.** To expressly allow a property owner or his or her authorized agent to electronically file an appeal application. According to the author, the online e-file process provides filers with step-by-step instructions, allowing them to file completely online, or to print, sign, and send the document directly to the Clerk of the Board. The author notes that e-filing allows greater efficiency in the filing process, by reducing paper, providing for quicker retrieval of documents, and faster scheduling of appeals hearings.
2. **This bill expressly states in the Revenue and Taxation Code that appeals boards may accept electronically filed appeal applications with an authenticated electronic signature.** This is consistent with existing practices in Orange County, which has been accepting appeal applications online for 5 years. While Orange County is currently the only county to implement an e-filing program for appeal applications, Santa Clara County will soon implement an identical online procedure. To visit Orange County's website see: http://www.oc.ca.gov/cob/propassessment.asp
3. **Current law does not expressly provide for e-filing appeal applications.** While the Government Code authorizes the use of digital signatures in communications with a public entity where a signature is required, the Revenue and Taxation Code does not expressly provide for e-filing and requires a certified, written application be filed and signed.
4. **Full e-filing is generally used by property tax agents that file many applications.** However, since an authenticated electronic signature is required as a precursor to filing online, a person filing an application on a single property generally uses the online appeals application, but would then print, sign, and mail the application. It would not be efficient for a single-filer to obtain an authorization for an electronic signature from the clerk of the county board of equalization for a single filing.

Assembly Bill 1748 (Committee on Revenue and Taxation) Chapter 342
Relief for Innocent Spouses

Effective January 1, 2008. Among other things, adds Sections 11408.5 and 38454.5 to the Revenue and Taxation Code.

BILL SUMMARY

This bill contains Board of Equalization-sponsored provisions, among which, authorizes the Board to provide relief of liability under the private railroad car tax and timber yield tax programs for an innocent spouse, if, in light of all the facts and circumstances, it is inequitable to hold that spouse liable for any unpaid tax, fee, or any deficiency (or any portion of either).

Sponsor: Board of Equalization

LAW PRIOR TO AMENDMENT

Under California's Sales and Use Tax Law, Section 6456 provides that under specified conditions, if a spouse establishes that he or she did not know of, and had no reason to know of, an understatement of a sales or use tax liability attributable to his or her spouse, and taking into account all facts and circumstances, it would be inequitable to hold that spouse liable for that tax liability, that spouse may be relieved of the liability attributable to the other spouse, without regard to community property laws.

Currently, there are no similar provisions for innocent spouse relief in any of the special tax and fee programs, or in the private railroad car tax and timber yield tax programs, administered by the Board.

AMENDMENT

This measure adds similar innocent spouse relief provisions under the following Board-administered programs:

Motor Vehicle Fuel Tax Law	Energy Resources Surcharge Law
Use Fuel Tax Law	Emergency Telephone Users Surcharge Law
Private Railroad Car Tax	Hazardous Substances Tax Law
Cigarette and Tobacco Products Tax Law	Integrated Waste Management Fee Law
Alcoholic Beverage Tax Law	Oil Spill Response, Prev. & Adm. Fees Law
Timber Yield Tax Law	Underground Storage Tank Maint. Fee Law
Fee Collections Procedures Law	Diesel Fuel Tax Law

COMMENT

Purpose. This measure would address those situations in which a spouse (including a registered domestic partner) is seeking relief from tax or fee liabilities associated with a jointly owned business. Frequently, a business that is required to be registered with the Board for sales and use tax purposes is also required to register with the Board for other tax and fee programs. While the Board may provide relief to a qualifying innocent spouse under the Sales and Use Tax Law, no such relief could be provided for the same innocent spouse held liable for amounts owed under the Board's other tax and fee programs. For example, a husband and wife jointly-owned wine growing business that operates a tasting room that sells wine and other taxable products must register with the Board for collection of the sales and use taxes and for payment of alcoholic beverage taxes. A qualifying innocent spouse in that business could be relieved of sales and use tax liability, but not for alcoholic beverage tax liability. Similar situations could arise with owners of a gas station responsible for remitting both sales and use taxes and underground storage tank fees to the Board.

The incidence of persons registered under the sales and use program and another Board-administered tax or fee program has increased due to the increase in the types of fees and taxes that are collected by the Board and to changes that have occurred in certain industries. Innocent spouses who own such businesses should be permitted to obtain equitable relief from special tax and fee liabilities, given the same circumstances as those under which they are permitted to obtain equitable relief from sales and use tax liabilities.

Senate Bill 38 (Battin) Chapter 222

Disaster Relief – Riverside County Fires

Effective September 21, 2007. Among other things, amends Sections 218 of, and adds Sections 195.110, 195.111, and 195.112 to, the Revenue and Taxation Code.

BILL SUMMARY

This bill, among other things, allows persons whose homes in Riverside County were destroyed as a result of wildfires occurring in October 2006 to retain the homeowners' exemption on their property while they are in the process of rebuilding.

This bill also provides one-year state reimbursement to backfill any property tax revenue loss resulting from assessment reductions related to the wildfires.

Sponsor: Senator Battin

LAW PRIOR TO AMENDMENT

Homeowners' Exemption. 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 on or before January 1, 2007 is not eligible for the homeowners' exemption on the 2007-08 property tax bill. [2]

Disaster Relief - Property Reassessment for Property Owners. Section 170 of the Revenue and Taxation Code provides that property taxes may be reduced following a disaster, misfortune, or calamity in those counties where the board of supervisors has adopted an ordinance authorizing these provisions. These provisions apply to both governor-declared disasters and site specific disasters such as a home fire. Disaster relief is provided by allowing the county assessor, under specified conditions, to reassess the property as of the date of the disaster to recognize the loss in a property's market value. The loss in value must be at least $10,000. The prior assessed value of the damaged property is reduced in proportion to the loss in market value; the new reduced value is used to calculate a pro-rata reduction in taxes. The affected property retains its lower value, with

[2] A home destroyed after January 1, 2007, would continue to be eligible for the exemption on the 2007-08 property tax bill. However, if the home has not been rebuilt and occupied by the next lien date, January 1, 2008, it would not be eligible for the homeowners' exemption on the 2008-09 property tax bill.

reduced taxes, until it is restored, repaired, or reconstructed. Generally, taxpayers have up to 12 months to file a request for reassessment.

Disaster Relief - State Reimbursement for Local Governments. Additionally, legislation is frequently enacted to fully reimburse local governments for one year's property tax revenue loss associated with Section 170 reductions in assessment.

AMENDMENT

Homeowners' Exemption. This bill, among other things, add subdivision (k) to Section 218 to provide that a dwelling qualified for the homeowners' exemption prior to October 26, 2006, and subsequently damaged or destroyed by wildfires and any other related casualty in the county of Riverside will continue to be eligible for the homeowners' exemption.

State Reimbursement. This bill would also provide state reimbursement for property tax revenue losses due to Section 170 disaster relief reassessments for the 2006-07 fiscal year for Riverside County. Specifically, it adds provisions to the Revenue and Taxation Code to outline the process and timeline for the counties, the Department of Finance, and the State Controller to follow.

BACKGROUND

Special purpose legislation has been enacted in recent years to provide that dwellings that were destroyed by specific disasters, as noted in the table 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.

Disaster	Year	Legislation
Northern California Storms, Floods & Mudslides	2006	Stats. 2006, Ch. 396 (AB 1798)
Northern California Storms, Floods & Mudslides	2006	Stats. 2006, Ch. 897 (AB 2735)
Shasta Wildfires	2005	Stats. 2005, Ch. 623 (AB 164)
Southern California Storms, Floods & Mudslides	2005	Stats. 2005, Ch. 624 (AB 18)
Southern California Storms, Floods & Mudslides	2005	Stats. 2005, Ch. 622 (SB 457)
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.** To provide some financial relief to persons whose homes were damaged or destroyed as a result of wildfires and provide property tax revenue backfill to Riverside County.
2. **Key Amendments.** The **August 27 amendments** modified the triple joining language to AB 62 and SB 114 to include amendments made to AB 62 which include the County of Ventura as an additional county affected by the Zaca fire.

The **August 20 amendments** modified the triple joining language to include amendments made to AB 62 which include the Zaca fire for Santa Barbara County. The amendments also extended the date that the auditor of Riverside County must report to the Department of Finance an estimate of property tax revenue reductions related to the fire from September 30 to October 31, 2007. The **July 12 amendments** added Sections 4.5, 4.7 and 4.9 to the bill to triple join this bill with AB 62 and SB 114 since all three bills propose amendments to Section 218 of the Revenue and Taxation Code.

3. **Proclamation.** On October 26, 2006, the Governor issued a proclamation of a State of Emergency for Riverside County for fires commencing on October 26, 2006.

4. **This bill allows homeowners whose residences were damaged or destroyed as a result of the fire 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) are technically ineligible for the exemption for the upcoming fiscal year under current law.

5. **The Board advises county assessors that damaged homes may keep the exemption but totally destroyed homes may not**. The Board staff has opined that a home temporarily vacated on the lien date because of damage from a disaster, such as a flood or fire, will not result in the loss of the exemption, provided the owner intends to return to the home after it has been repaired. (See Letter To Assessors 82/50, Question G16) However, when the home has been totally destroyed, staff has opined that the property would not qualify for the exemption except in cases, such as this bill would provide, where legislation has been enacted to provide that the property will not lose its homeowners' exemption due to the disaster. To be eligible for the exemption, the law requires (1) the existence of a dwelling and (2) that it be occupied by the owner. If a home is totally destroyed, then no dwelling exists on the property and therefore of course it could not be occupied as a principal place of residence. (See Property Tax Annotation 505.0019 "Homeowners' Exemption – Disaster Impact") Referenced documents available at www.boe.ca.gov select "Property Tax."

6. **Related Bills.** AB 62 (Ch. 224, Nava) makes similar amendments to Section 218 for other major fires: (1) fires occurring in Ventura County in 2006, (2) fires occurring in El Dorado County in June of 2007, and (3) the Zaca fire occurring in Santa Barbara and Ventura counties in 2007. SB 114 (Ch. 223, Florez) makes similar amendments for damages incurred in those counties that were declared by the Governor to be in a state of emergency due to severe freezing conditions that commenced January 11, 2007.

Senate Bill 87 (Committee on Budget and Fiscal Review) Chapter 180

Fractionally Owned Aircraft

Business Property Statement-Use Tax

Effective August 24, 2007. Among other things, amends Sections 441 and 452 of, and adds Section 5368 and Article 7 (commencing with Section 1160) to Chapter 5 of Part 2 of Division 1 to, the Revenue and Taxation Code.

BILL SUMMARY

This Budget trailer bill makes changes necessary to implement the Budget Act of 2007. This bill, in regards to the Board, does the following:

- Establishes streamlined property tax administration procedures to use in the assessment of fractionally owned aircraft using a centralized approach whereby the manager in control of the aircraft fleet would file a single property statement with a designated "lead" county. It also provides for coordinated multi-county audits.
- Requires annual business property statements filed with county assessors for property tax purposes to include information about the use tax, as specified.

Sponsor: Committee on Budget and Fiscal Review

Fractionally Owned Aircraft
Revenue and Taxation Code Sections 441 and 5368
Article 7 (commencing with Section 1160) of Chapter 5 of Part 2 of Division 1 to the Revenue and Taxation Code

LAW PRIOR TO AMENDMENT

Personal Property. Article XIII, Section 1 of the California Constitution provides that all property is taxable unless otherwise exempt by the state constitution or the laws of the United States. Section 2 thereof provides that the Legislature may, two-thirds of the membership of each house concurring, classify any personal property for differential taxation or for exemption. Revenue and Taxation Code Section 405[3] requires the assessor to assess all taxable property in the county and the assessor may assess the property to the person either owning or controlling the property.

Situs. In a well-established line of cases, the United States Supreme Court has held that personal property involved in interstate travel or commerce, such as an aircraft, may be subject to taxation by any state or states (or their political subdivisions) in which the property maintains a substantial presence. As a necessary precondition to the taxing power of a state or subdivision, the constitutional principle of due process requires that the property receive the "opportunities, benefits, and protections" of the taxing jurisdiction by reason of its "habitual or continuous" presence in that jurisdiction.

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[3] All statutory references are to the Revenue and Taxation Code unless otherwise specified.

Property may have substantial contact with two or more states sufficient to establish a taxable situs in each of those states. If two or more states acquire the power to tax certain property owing to the property's having acquired tax situs in their states, constitutional principles relative to interstate commerce require that each state impose such a tax only on a nondiscriminatory basis. That is, each state may impose a tax only in proportion to the "opportunities, benefits and protections" that it affords to the property. Apportionment ensures that property is not subjected to a greater tax burden by reason of its substantial presence in more than one state.

Thus, when property has situs in California but has its permanent or primary situs in another state or country, it is taxable here only to the extent of time spent in California. Consequently, taxation of aircraft may require value apportionment.

General Aviation Aircraft and Certificated Aircraft. Currently, there are no special assessment provisions for fractionally owned aircraft used in Fractional Ownership Programs that are using California airports. The Revenue and Taxation Code contains separate provisions of law related to the taxation of aircraft depending upon one of two types of traditional ownership and use: (1) general aircraft and (2) certificated aircraft. Typically, "certificated aircraft" are commercial aircraft operated by air carriers for passenger or freight service, while "general aircraft" are typically privately owned aircraft, such an aircraft kept at a hangar at a local airport. General aircraft are assessed on an aircraft by aircraft basis and an assessment is made only in a single county where the aircraft is habitually situated – even if the aircraft routinely uses other airports in other counties in the state. Certificated aircraft are assessed based on a "fleet basis" and assessments are made for each county in which the aircraft in the fleet land.

Under current law fractionally owned aircraft that have acquired taxable situs in California would be assessed under the provisions for general aircraft. However, in actual practice, fractionally owned aircraft are a new form of ownership and these aircraft have not yet been assessed in California. Essentially, the business model of fractional ownership programs is a hybrid of general and commercial aviation.

The provisions for general aircraft are contained in Part 10 (commencing with Section 5301) of Division 1 of the Revenue and Taxation Code. The provisions for certificated aircraft are contained in Article 6 (commencing with Section 1150) of Chapter 5 of Part 2 of Division 1 of the Revenue and Taxation Code. Additionally, streamlined centralized assessment provisions have been provided for certificated aircraft in Section 441(l) which allows commercial air carriers to file a single property statement for all their holdings with a lead county and provides for centralized audits.

Mandatory Audits. Section 469 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."

Information from Airport Operators – Home Based Aircraft. Section 5366 requires airport operators to provide the local county assessor with specified information about aircraft owners that use the airport as a base by January 15 of each year.

AMENDMENT

This bill adds Article 7 (commencing with Section 1160) to Chapter 5 of Part 2 of Division 1 of the Revenue and Taxation Code, entitled "Fractionally Owned Aircraft" and follows Article 6 related to the assessment of certificated aircraft. Article 7 together with an amendment to Section 441 and cross references to sections of code within Part 10's provisions for general aircraft establishes the administrative procedures to use in assessing fractionally owned aircraft that use airports in California. The administrative procedure is a hybrid of provisions for general aircraft and the simplified centralized system used for certificated aircraft as well as the fleet concept used for certificated aircraft.

This bill includes detailed findings stating that: (1) a substantial portion of business aviation aircraft is now owned and operated under fractional ownership programs, (2) the aircraft in the programs have a substantial presence in California, (3) taxing these aircraft on an aircraft by aircraft basis would be a burden for both taxpayers and tax officials warranting simplification, (4) the aircraft are constitutionally required to be taxed, and (5) the proposed simplified procedure is appropriate and fair, allocates assessed value among counties in a reasonable manner and reduces the administrative burden on taxpayers and county assessors.

This bill specifically provides the following:

Situs. Expressly provides that a fleet of fractionally owned aircraft operated in a fractional aircraft ownership program obtains situs in California when an aircraft within the fleet lands in California. With respect to ensuring the fleet are taxed in a manner that will reflect their actual presence in California, the bill provides a value allocation formula based upon the presence of aircraft in California, as specified.

Centralized Administrative System. Implements a centralized administrative system by outlining the process for selecting the lead county for each fractionally owned aircraft program, notifying the manager of the responsible lead county to which it would file its information, and detailing the duties of the lead county.

Consolidated Property Statement. Provides that the manager in control of a fleet of fractionally owned aircraft file a single property statement with a designated "lead" county. Flight data included in the statement would be required to be segregated by airport.

Centralized Fleet Valuation. The lead county would calculate the unallocated fleet value of aircraft operated in the fractional ownership program for each make, model, and series. This information would then be transmitted to the other counties.

Value Standard. The value of the aircraft within the fleet would be valued the same as general aircraft. That is, current market value using commercially available aircraft price guides approved by the Board.

Value Allocation. Each individual county would then determine their allocated portion of the total fleet value based on the flight data for that particular county. The formula, based upon the number of landings in, and departures from, a county in proportion to landings and departures worldwide. Each county assessor is responsible for assessing and enrolling the taxable value of the aircraft that has situs in his or her county.

Assessments. Provides that the fleet be assessed to the manager in control of the fleet.

Applicable Years. These provisions apply beginning with fiscal years 2007-08. However, for fractionally owned aircraft that have not been previously assessed, the provisions could apply for preceeding fiscal years, as specified.

Mandatory Audits - One Coordinated Audit. The lead county would head up an audit team of up to three counties. The audit would be deemed to be made on behalf of all California counties that would otherwise be required to perform a mandatory audit under Section 469

Information from Airport Operators – Aircraft using Facilities. This bill adds Section 5386 to require airport operators, upon an assessor's request, to provide information related to the aircraft that uses the airport facilities.

IN GENERAL

General Aviation Aircraft. Existing property tax law requires that aircraft, other than certificated aircraft, be valued and assessed only in the county in which it is habitually situated. General aircraft is annually reassessed each year at its current fair market value on the lien date. In valuing aircraft, the Board, pursuant to Section 5364, approves and recommends the use of certain commercially available aircraft valuation guides. These guides ensure uniformity in the valuation of aircraft in California for property tax purposes. The Board officially adopted two commercially available aircraft price guides for use when estimating the value of general aircraft: Aircraft Bluebook-Price Digest is the primary guide for valuing general aircraft, while the Vref Aircraft Value Reference is the alternate guide for aircraft not listed in the Aircraft Bluebook.

Certificated Aircraft. 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. 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[4] (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.

The Fleet Concept - Example. 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.

Valuation and Apportionment. Section 401.17 details the assessment methodology for determining the market value of certificated aircraft owned by commercial air carriers to be used for the 2005 through 2010 assessment years. (Section 401.15 details the methodology that was used for the 1997 through 2004 years) 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

[4] 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.

situs within a county. Property Tax Rule 202, subdivision (c) provides further details in the allocation procedure. 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.

Centralized Assessment Procedures. Beginning in 2006, legislation established centralized assessment procedures for certificated aircraft. Section 441(l) provides 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. Additionally, Section 1153.5 provides for a coordinated multi-county audit team to perform mandatory audits of commercial air carriers. (AB 964, Ch. 699, Stats. 2005)

COMMENTS

1. **Purpose.** This a budget trailer bill. The purpose of this provision is to establish a simplified procedure for assessing fractionally owned aircraft that is appropriate and fair, that allocates assessed value among counties in a reasonable manner, and that reduces the administrative burden on taxpayers and county assessors.

2. **Budget Bill Appropriation related the assessment of fractionally owned aircraft was vetoed.** While it was line item vetoed by the Governor, the Budget Bill (SB 77) sought to provide $3,500,000 in one time grants to county assessors (Item 9210-107-0001, page 728) if the Department of Finance determines that at least $30,000,000 in assessments has resulted from the assessment of fractionally owned aircraft fleets.

3. **What are Fractionally Owned Aircraft?** Fractionally owned aircraft, as defined by the Federal Aviation Administration (FAA), are aircraft that are privately owned and operated pursuant to FAA regulations for operations in Fractional Ownership Programs. Essentially these are fleets of aircraft that are managed and maintained by an operating company but ownership is distributed like a time-share. Participants in the programs have on demand, random access to aircraft in the program. Fractional ownership of aircraft is an overall concept using (1) shared ownership, (2) exchange of "dry leases" which allows the exchange of aircraft between owners in the program, and (3) the use of an aircraft management company. The management company handles all operating requirements of the aircraft, including availability, maintenance, billing, shareowner usage, training, and flight crews. The National Business Aviation Association estimates that 1,200 fractionally owned aircraft operate in the United States with approximately 10,000 individual owners or "shareholders."

4. **Fractional Aircraft Ownership Programs are an emerging commercial aviation industry that has rapidly expanded in the last 10 years and will likely continue to grow.** Existing law requires that the aircraft be taxed using the provisions for general aircraft. But the assessment of these aircraft does not fit well into a body of law set up for traditional forms of aircraft ownership and use. It would be administratively impractical to use these particular sections of

law. Furthermore, the revenues would likely be dedicated to one county in California (the one particular airport most often used) rather than shared among the counties.

5. **This bill creates a new body of law to address these specific types of aircraft.** Fractionally owned aircraft are relatively new, and assessment has generally been deferred by the counties pending approval of the streamlined approach that also resolves the administrative difficulties.

6. **A centralized administrative system**. The central assessment of these aircraft would result in administrative efficiencies for both fractional ownership programs and counties. This bill uses elements of the recently enacted streamlined administrative approach for certificated aircraft owned by commercial airlines: one-stop reporting, the lead county concept, and coordinated audits. It also borrows from the "fleet concept" used for assessing certificated aircraft, whereby the entire fleet is valued and then only an allocated portion of the entire value of the fleet is ultimately taxed to reflect presence in California and the individual counties within California.

7. **Revenue distribution - sharing California's portion of allocated value among the counties.** The value allocation between counties within the state would be more similar to that used for certificated aircraft than general aircraft. Specifically, value would be apportioned to each county based on that county's annual share of landings and takeoffs of each aircraft type in the fleet as a proportional of total annual worldwide landings. With general aircraft, value is allocated to a single county.

8. **Supporters note that fractional ownership programs are currently enjoying a competitive advantage**. Both charter operators of aircraft located at airports based in California or that habitually use California airports and aircraft owned by commercial airlines using California airports are subject to property tax. Both of these commercial sectors are losing customers to the fractional ownership programs.

9. **Various terms used in the bill would benefit from expansion and clarification to avoid implementation uncertainties and the creation of opportunities to restructure the ownership programs to avoid assessment under the proposed provisions:**

   - This bill expressly provides that the fleet will be assessed to the "manager in control of the fleet" but the phrase is not defined. Providing a definition of this term would be beneficial.
   - It would also be beneficial to specify the circumstances under which an aircraft is "operated" by a manager for purposes of determining the composition of specific fleets.
   - While the bill states that a "notice of assessment" will be "issued" to the manager in control of a fleet, it does not expressly state that the "notice" will ultimately result in a property tax assessment resulting in a property tax liability that, presumably, the bill intends for the manager to pay the taxes on behalf of the fractional owners.

Business Property Statement – Use Tax
Revenue and Taxation Code Section 452

LAW PRIOR TO AMENDMENT

Use Tax. Under the existing Use Tax Law, Chapter 3 (commencing with Section 6201) of Part 1 of Division 2 of the Revenue and Taxation Code, a use tax is imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. The use tax is imposed on the purchaser, and unless that purchaser pays the use tax to a retailer registered to collect the California use tax, the purchaser is liable for the tax, unless the use of that property is specifically exempted or excluded from tax. The use tax is the same rate as the sales tax and is required to be remitted to the Board on or before the last day of the month following the quarterly period in which the purchase was made, or to the Franchise Tax Board (FTB) via the income tax return. A use tax liability is primarily a result of a California consumer or business making a purchase of an item for their own use from an out-of-state retailer that is not registered with the Board to collect the use tax.

Business Personal Property Tax. Under existing property tax laws, an ad valorem tax is imposed every year on all assessable personal property used in a trade or business at its current fair market value. In making this annual assessment, taxpayers typically report the cost of their property holdings to the local county assessor on the "business property statement" as provided for in Section 441. The business property statement shows all taxable property, both real and personal, owned, claimed, possessed, controlled, or managed by the person filing the property statement. When the aggregate cost of the taxable personal property is $100,000 or more, the person is required to file a business property statement, signed under penalty of perjury, each year with the assessor.

Section 452 requires the Board to prescribe the content and detail of the business property statement used by assessors. Section 452 specifies that the property statement shall not include any question that is not germane to the assessment function and Section 451 requires the assessor to hold secret the information furnished in the statement.

AMENDMENT

This bill amends Section 452 to require the Board to include in the business property statement it prescribes for the use of local county assessors:

- A brief statement about the obligation to pay use tax on taxable purchases if sales tax was not applicable.
- Information about how to pay use tax, which could be limited to the Board's phone number and web address where additional information and use tax returns could be accessed.
- A statement advising the taxpayer that information provided on the business property tax statement may be shared with the Board.
- This bill also specifies that the Board is to implement these requirements in a manner that does not increase local costs.

BACKGROUND

The collection of use tax relies heavily on the voluntary compliance of purchasers of tangible personal property. However, due to the general misconception that purchases from outside this state are "tax free" and that audit resources are insufficient to pursue all purchasers, the voluntary compliance rate has been very low. Untaxed purchases from out of state retailers is the largest area of non-compliance the Board's audit staff encounters.

The Board is the state agency responsible for administering the provisions of the use tax. However, in an effort to increase voluntary compliance by purchasers not registered with the Board, legislation enacted in 2003, SB 1009, (Alpert, Ch. 718) requires the FTB to add a line to the state's income tax forms allowing taxpayers to self-report their use tax liabilities to the FTB.

In 2005, two bills were introduced in the Legislature, AB 911 (Chu) and AB 1618 (Klehs), to require business property statements filed with county assessors for property tax purposes to include information regarding the use tax on acquisitions of property identified on the statements. Neither bill was ultimately enacted with this provision.

This year's proposed Budget Bill for 2007-08, SB 77 (Ducheny), provides $400,000 for the Board to (1) contract with up to three selected county assessors offices on a pilot basis to include with their business property statements an additional message from the Board explaining the obligation to pay use tax on nonexempt purchases if sales tax was not paid and to provide, in electronic form, data to the Board from the business property statements on recent equipment purchases by businesses, and (2) for the Board to conduct discovery audits for the primary purpose of determining whether the problem of nonpayment of use tax by businesses is significant and to determine, if feasible, areas with the greatest noncompliance (for example, by type of business, size, or geographic area). The Board may seek the assistance of the selected county assessors in selecting and identifying businesses for potential discovery audits.

COMMENTS

1. **Purpose.** The purpose of this provision is to use the annual business property tax statement as an outreach tool in an effort to increase use tax education and compliance.

2. **Budget Bill Appropriation related to the business property statements and the use tax was vetoed.** The Budget Bill passed by the Legislature provided $400,000 to the Board (Item 0860-001-0001) to contract with up to three local county assessors in a pilot project to provide electronic information from business property statements filed with those assessors that identify businesses with recent equipment purchases and for the Board to conduct discovery audits with a use tax emphasis**.** However, this item was line item vetoed by the Governor.

3. **Enactment of this bill would "get the word out."** Collecting use tax relies heavily on voluntary compliance. This bill will assist in informing and advising those taxpayers most likely to be incurring a greater portion of use tax liabilities (i.e., those with tangible personal property holdings in excess of $100,000 that are used in a trade or business) of their use tax responsibilities under the law. It will also enable the Board and county assessors to share the information

obtained from the business property statements to facilitate administration of the tax laws.

4. **Business Property Statements.** Proponents of closing the use tax gap have noted that local county assessors receive annual property tax statements from businesses related to their personal property holdings that could be used as a data mining source. However, in its present form, the business property statement is not a useful discovery tool. Taxpayers report their personal property holdings by year of acquisition in lump sum amounts that are broken down by a few broad category types. In addition, there are issues with the confidentiality of these property statements as well as their use for other tax purposes, which this bill would expressly address.

5. **Administrative efficiencies in using an existing taxpayer base.** Proponents note that the annual contact that assessors already have with businesses that own tangible personal property at the local level could be a cost effective means to educate and obtain voluntary use tax remittance from businesses as well as provide use tax leads for the Board to pursue.

6. **State and local government partnership and cooperation to facilitate administration of the tax laws and possible enhanced revenues.** The Board is the state agency responsible for administering the provisions of the use tax. However, local governments would receive a share of previously uncollected use tax as well as an increase in property tax revenues that may result due to the educational outreach that will occur with the business property statement.

Senate Bill 114 (Florez) Chapter 223

Disaster Relief – Freeze

Effective September 21, 2007. Among other things, amends Section 63.1 of the Revenue and Taxation Code.

BILL SUMMARY

This bill, among other things, allows persons whose homes were damaged or destroyed as a result of severe freezing conditions that occurred in January 2007 to retain the homeowners' exemption on their property while they are in the process of repairing or rebuilding.

This bill also provides one-year state reimbursement to backfill any property tax revenue loss resulting from assessment reductions to counties that the Governor declared to be in a state of emergency as a result of the severe freeze.

Sponsor: Senator Florez

LAW PRIOR TO AMENDMENT

Homeowners' Exemption. 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 forthcoming fiscal year (July 1 – June 30). For example, if a home receiving the homeowners' exemption burns down in a fire in 2006 and has not been rebuilt and occupied by the next lien date (January 1, 2007), it does not qualify for the homeowners' exemption on the 2007-08 regular property tax bill.

Disaster Relief - Property Reassessment for Property Owners. Section 170 of the Revenue and Taxation Code provides that property taxes may be reduced following a disaster, misfortune, or calamity in those counties where the board of supervisors has adopted an ordinance authorizing these provisions. These provisions apply to both governor-declared disasters and site specific disasters such as a home fire. Disaster relief is provided by allowing the county assessor, under specified conditions, to reassess the property as of the date of the disaster to recognize the loss in a property's market value. The loss in value must be at least $10,000. The prior assessed value of the damaged property is reduced in proportion to the loss in market value; the new reduced value is used to calculate a pro-rata reduction in taxes. The affected property retains its lower value, with reduced taxes, until it is restored, repaired, or reconstructed. Generally, taxpayers have up to 12 months to file a request for reassessment.

Disaster Relief - Property Tax Deferral for Governor Declared Disasters. Section 194.1 of the Revenue and Taxation Code allows property owners who file a claim for reassessment under Section 170 to defer the payment of their next property tax installment. If a disaster results in the issuance of a state of emergency proclamation by the Governor, affected property owners may have their next property tax installment payment deferred, without penalty or interest, until the assessor has completed the reassessment of the damaged property pursuant to the provisions of Section 170. Deferred taxes are due 30 days after a receipt of the corrected tax bill. However, property owners whose taxes are paid through impound accounts are not eligible for these deferment provisions. Existing Sections 194.2 through 194.5 outlines a process for counties to obtain a bridge loan from the state to cover the loss of revenues due to taxpayers that requested a deferral of their property taxes.

Disaster Relief - State Reimbursement for Local Governments. Additionally, legislation is frequently enacted to fully reimburse local governments for one year's property tax revenue loss associated with Section 170 reductions in assessment.

Growing Crops are Exempt from Property Tax. Section 170 provides relief for damaged or destroyed taxable property. The State Constitution expressly exempts growing crops from property taxation (Article XIII, Section 3(h)). Consequently, since growing crops are not taxable property, the loss of growing crops as a result of the extreme cold (or any other cause) is not cause for reassessment under Section 170. In order for orchards or vineyards to qualify for relief, there must be damage to the trees or vines themselves.

Trees Less than Five Years Old are Exempt from Property Tax. Section 3(i) of Article XIII of the California Constitution and Revenue and Taxation Code Section 211 provide a property tax exemption for fruit and nut bearing trees until four years after the season they are planted in orchard form. Grapevines are exempt until three years after the season they are planted in vineyard form. Additionally, with respect to individual trees, Property Tax Rule 131 provides that these exemption periods restart when (1) a tree is newly planted within an existing orchard (i.e., a replacement tree) or (2) a tree that had reached commercial production requires grafting causing another non-producing period before it will bear fruit or nuts.

AMENDMENT

Homeowners' Exemption. This bill, among other things, adds subdivision (k) to Section 218 of the Revenue and Taxation Code to provide that a dwelling qualified for the homeowners' exemption prior to January 11, 2007 and subsequently damaged or destroyed by severe freezing conditions and any other related casualty will continue to be eligible for the homeowners' exemption.

State Reimbursement for Local Governments. This bill also adds provisions to the Revenue and Taxation Code to outline the process for counties and affected state agencies obtaining state reimbursement for any property tax revenue reduction granted under Section 170.

BACKGROUND

Special purpose legislation has been enacted in recent years to provide that dwellings that were destroyed by specific disasters, as noted in the table 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.

DISASTER	YEAR	LEGISLATION
Northern California Storms, Floods & Mudslides	2006	Stats. 2006, Ch. 396 (AB 1798)
Northern California Storms, Floods & Mudslides	2006	Stats. 2006, Ch. 897 (AB 2735)
Shasta Wildfires	2005	Stats. 2005, Ch. 623 (AB 164)
Southern California Storms, Floods & Mudslides	2005	Stats. 2005, Ch. 624 (AB 18)
Southern California Storms, Floods & Mudslides	2005	Stats. 2005, Ch. 622 (SB 457)
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.** Related to the property tax elements of this bill, this measure provides some financial relief to persons whose homes were damaged or destroyed as a result of the freeze as well as provide local government with revenues to backfill any property tax losses associated with assessment reductions related to the freeze.

2. **Key Amendments.** The **August 31** amendments made conforming amendments to the triple join provisions of the bill to reflect amendments made to AB 62 and SB 38. The **July 3** amendments triple joined this bill with AB 62 and SB 38. The **March 7** amendments made nonsubstantive changes and add coauthors.

3. **Proclamations.** In January of 2007, the Governor issued four proclamations of a state of emergency for a total of 18 counties related to the severe freezing weather as follows:

   - January 16: Fresno, Kern, Kings, Madera, Merced, Monterey, San Luis Obispo, Santa Barbara, Tulare and Ventura counties
   - January 19: Imperial, San Bernardino, San Diego, Santa Clara, Riverside, and Yuba counties
   - January 20: Stanislaus County
   - January 26: El Dorado County

4. **Agricultural Property.** There are two points about disaster relief as it applies to agricultural property worth noting:

   First, because growing crops are not subject to tax there is no property tax relief available if they are damaged. However, if the trees themselves are damaged, then property tax reductions are possible. Specifically, Section 170 provides relief for damaged or destroyed taxable property. The State Constitution expressly exempts growing crops from property taxation (Article XIII, Section 3(h)). Consequently, since growing crops are not taxable property, the loss of growing crops as a result of the extreme cold (or any other cause) is not cause for reassessment under Section 170. Therefore, in order for orchards or vineyards to qualify for relief under Section 170, there must be damage to the trees or vines themselves.

Secondly, any tree or vine that is damaged and must be replaced or pruned will receive a new four year exemption under Property Tax Rule 131. On a related note, newly planted trees and vines in orchard form that are still in their exemption period would not be eligible under Section 170 since they are already exempt from tax under the constitution and Section 211.

5. **This bill would allow homeowners whose residences were damaged or destroyed as a result of severe freezing conditions and any other related casualty 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) are technically ineligible for the exemption for the upcoming fiscal year under current law. This disaster occurred after the lien date. A home damaged or destroyed after January 1, 2007, such as any home damaged or destroyed by the freeze which commenced on January 11, would continue to be eligible for the exemption on the 2007-08 regular property tax bill. However, if such a home is not rebuilt and occupied by the next lien date, January 1, 2008, then it is not eligible for the exemption on the 2008-09 regular property tax bill.

6. **Homeowners' Exemption – Disaster Impact.** The 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 Tax."

7. **Related Legislation - Four Year Exemption for Damaged Trees and Property Tax Deferral.** SB 148 (Hollingsworth) and AB 297 (Maze) propose an amendment to Section 211 to restart the four year exemption for newly planted fruit and nut trees that must be pruned back to the trunk or bud union related to the 2007 freeze. Similar legislation was enacted for damaged trees and grapevines damaged in the 1990 and 1998 severe freezes. SB 148 also allows taxpayers that lost at least 60% of their annual income due to the freeze to defer the December 10, 2007 property tax installment payment for one year without interest or penalty. Only AB 297 (Ch. 225, Stats. 2007) was enacted

8. **Related Legislation – Homeowners' Exemption.** AB 62 (Ch. 224, Nava) makes similar amendments to Section 218 related to various disasters: (1) fires occurring in Ventura County in 2006, (2) fires occurring in El Dorado County in June of 2007, and (3) the Zaca fire occurring in Santa Barbara and Ventura counties in 2007. In addition, SB 38 (Ch. 222, Battin) makes amendments to Section 218 for fires occurring in Riverside County. Since AB 62 was chaptered last, the provisions of this bill will be made by triple joining language included in AB 62.

Senate Bill 559 (Kehoe) Chapter 555

Change in Ownership – Registered Domestic Partners

Effective October 12, 2007. Amends Section 62 of the Revenue and Taxation Code.

BILL SUMMARY

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

Sponsor: Equality California

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 XIIIA, Sec. 2; Revenue and Taxation Code Sections 60 - 69.7)*

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

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

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

AMENDMENT

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

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

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

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

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

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

IN GENERAL

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

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

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

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

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

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

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

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

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

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

BACKGROUND

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

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

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

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

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

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

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

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

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

COMMENTS

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

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

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

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

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

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

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

Senate Bill 1045 (Committee on Revenue and Taxation) Chapter 449

Property Tax Omnibus Bill

Effective January 1, 2008. Amends Sections 63.1, 69.5, and 215.1 of the Revenue and Taxation Code.

BILL SUMMARY

This Board-Sponsored property tax omnibus bill:

- Related to the parent-child change in ownership exclusion, clarifies that a property need only be eligible for the homeowners' exemption, and not actually receiving the exemption, to qualify as a principal residence. *§63.1*
- Related to base year value transfers for the elderly and disabled, corrects terminology used in the list of persons who have access to the confidential claim forms by substituting the proper term of "claimant" and adds trustees. *§69.5*
- Related to the veterans' organization exemption, adds a cross reference to the organization clearance certificate issued by the Board that is necessary to obtain the exemption from the local assessor. *§215.1*

Sponsor: Board of Equalization

Parent-Child Exclusion – Homeowners' Exemption on Principal Residences

Revenue and Taxation Code Section 63.1

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 XIIIA, Sec. 2; Revenue and Taxation Code Sections 60 - 69.5)

Proposition 58, which was approved by the voters of California in 1986, added subdivision (h) to Section 2 of Article XIII A of the California Constitution, and provides, in part, that the term "change in ownership" shall not include the purchase or transfer between parents and their children of:

- a principal residence,
- or the first $1 million of the full cash value of all other real property.

This "change in ownership exclusion" avoids reassessment of the property to its current market value. Consequently, children can preserve the Proposition 13 protected value of property acquired from their parents (or vice versa) allowing the property taxes on the property to remain the same after the transfer. There is no value limitation on a property that qualifies as a principal residence and its value does not count towards the $1 million cap on the amount of the exclusion available to properties transferred between parents and children. Any property transferred after the $1 million assessed value ceiling is reached is subject to reassessment at current market value.

Proposition 193, which was approved by voters in 1996, amended Section 2 of the Constitution 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.

Revenue and Taxation Code Section 63.1 provides the statutory implementation for both Propositions 58 and 193.

Principal Residence – Homeowners' Exemption Status. Relevant to this bill, subdivision (b)(1) of Section 63.1 defines a "principal residence" as a dwelling for which a homeowners' exemption (or a disabled veterans' exemption) has been *granted* in the name of the eligible transferor. To receive the homeowners' exemption, which provides an exemption of $7,000 of assessed value, a property owner need only file a one-time claim with the county assessor. The qualifications for the homeowners' exemption are set forth in Section 218 of the Revenue and Taxation Code (Section 205.5 for the disabled veterans' exemption).

Grandparent – Grandchild Transfers. Section 63.1(d)(1)(A) requires a transferee to make a written certification attesting to the familial relationship when filing a claim for the change in ownership exclusion. Relevant to this bill, under the terms of Section 2(h)(2)(A) and (B) of Article XIII A of the California Constitution, the grandparent-grandchild exclusion only applies in one direction, that is a transfer from a grandparent to a grandchild. In contrast, the parent-child exclusion applies to transfers in either direction, i.e. a child may transfer property to a parent and vice versa.

AMENDMENT

Principal Residence – Homeowners' Exemption Status. This bill amends Section 63.1(b)(1) to modify the definition of "principal residence" to mean a property that is *eligible* for the homeowners' exemption (or a disabled veterans' exemption) as a result of the transferor's ownership and occupancy of the dwelling. Thus, to be a "principal residence" the property in question must be eligible for the homeowners' exemption, but need not actually be receiving the exemption.

Grandparent – Grandchild Transfers. This bill also amends Section 63.1(d)(1)(A) related to the transferee's written certification as to the familiar relationship to delete an erroneous reference to "grandparent" since a grandparent is not an eligible transferee. (Also see definition of "eligible transferee" in Section 63.1(c)(7) which does not include a grandparent in the list of eligible transferees.)

COMMENTS

1. **Purpose.** This provision related to the homeowners' exemption is a housekeeping measure to ensure that property owners receive the full benefit of the parent-child change in ownership exclusion to which they are entitled. The provision related to the written certification when claiming the grandparent-grandchild exclusion is made for purposes of technical precision.
2. **The June 27 amendment** modified the definition of "principal residence" in order to avoid repeating the phrase "principal residence" in its definition.
3. **This Codifies Administrative Practices**. Generally, the current administrative practice is that if the transferor, which is typically the parent, was not receiving the homeowners' exemption on their principal residence, but the taxpayer

provides proper documentation that the property was nonetheless the transferor’s principal place of residence, the assessor will grant the parent-child exclusion on the property as a principal residence.

4. **Principal Residences Don’t Count Toward the Cap.** The benefit of receiving the exemption on a principal residence is that its value is not counted towards the $1 million limitation, in the event that there are other real property holdings to be transferred between the parents and children.

5. **Homeowners do not always claim the exemption to which they are entitled.** Some homeowners may never have filed a claim for the homeowners' exemption even if the property was their principal residence. This can occur because the homeowner is unaware of the exemption, misses a deadline, or moves from one of their previously owned homes to another owned home without changing the homeowners’ exemption to the new home. In some instances, a homeowner may choose not to file for the exemption as the benefit is relatively minimal at $70 per year and requires the disclosure of social security numbers.

6. **Similar sections of law specify only “eligibility” for the homeowners exemption.** For instance, Section 69.5, which provides the statutory implementation for Proposition 60 (passed by the voters at the same time as the parent-child exclusion) and enacted in the same year as Section 63.1, requires that the original and replacement properties be *eligible* for the homeowners' or disabled veterans' exemption based on the ownership and occupation by the claimant as their principal residence. It is inconsistent to require the homeowners’ exemption to be “granted” in Section 63.1 yet only require “eligibility” for the exemption in Section 69.5, which is a similar statute.

Base Year Value Transfers – Claim Form Inspection
Revenue and Taxation Code Section 69.5

LAW PRIOR TO AMENDMENT

Existing law provides that claims for the parent-child exclusion and base year value transfers for the elderly and disabled are not public documents and are not subject to public inspection except to an express list of persons with a relationship to the person who originally filed the claim, as specified. These provisions are found in Section 63.1(i) and Section 69.5(n), respectively.

Currently, both Sections 63.1(i) and 69.5(n) use identical language in referencing the express list of persons who may access the claim which is technically inaccurate. Specifically both sections use the terms transferee and transferor. But that language is only appropriate under Section 63.1 claims where the parent is the “transferor” and the child is the “transferee” and both parties to the transfer of the property may need to access the claim form. With respect to Section 69.5 claims, the correct term would be “claimant.”

AMENDMENT

This bill amends Section 69.5(n) to replace the terms transferee and transferor with the correct term “claimant.” In addition, this bill also provides that the trustee of a trust in which the claimant or the claimant’s spouse is a present beneficiary may inspect the claim.

BACKGROUND

In 2005, the Board sponsored changes to Section 63.1 (parent-child change in ownership exclusion) and Section 69.5 (base year value transfers for the elderly and disabled) to expressly provide in statute that the claims taxpayers file to receive these property tax relief benefits are not public documents. These claims contain taxpayer sensitive personal information, including social security numbers, dates of birth, home addresses, home telephone numbers, marital status, adoption status, financial matters, and private medical information. (SB 555, Ch. 264, Stats. 2005)

The claim forms, which the Board prescribes for use in all of the counties, have always included a statement that they are not subject to public inspection. This statement was based on the opinion that the claims are exempt from public disclosure pursuant to the Information Practices Act, which limits the dissemination of personal information. The Board sought the legislative changes to expressly provide that the claims are not available for public inspection to ensure taxpayer confidentiality and avoid any uncertainty since both statutes were silent on the issue.

The original language contained in SB 555 was amended during the legislative process to address concerns raised by the Trusts and Estates Law Section of the State Bar of California to ensure that specified persons would have access to needed information contained in the claim forms. The State Bar Section was concerned that the bill, as introduced, would have prevented claimants and their legal representatives from gaining access to their own claim forms. Thus, amendments were taken to expressly list those persons who would have a right to access Section 63.1 and Section 69.5 claim forms. However, the amendments made to address these concerns inadvertently used the same language for both Section 69.5 and Section 63.1 which is technically inaccurate.

COMMENT

Purpose. This provision is purely technical. Section 63.1 relates to “transferees” and “transferors,” but Section 69.5 should refer to “claimants” since there is no “transferee” and “transferor” in a Section 69.5 base year value transfer situation.

Veterans' Organization Exemption – Organization Clearance Certificates
Revenue and Taxation Code Section 215.1

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 215.1 provides for the exemption of all buildings, and the real property required for the convenient use and occupation of the exempt buildings, owned by a veterans' organization which has been chartered by the Congress of the United States and is organized and operated for charitable purposes. This exemption is popularly known as the "veterans' organization exemption" and it is jointly administered by the Board and the local county assessor.

Claims for the veterans' organization exemption are filed annually with the county assessor in the county in which the organization's property is located, as provided by Section 254.5. Claims are made on form BOE 269-AH (Claim for Veterans' Organization Exemption). The assessor may not grant a claim unless the veterans' organization holds an Organizational Clearance Certificate issued by the Board pursuant to Section 254.6.

AMENDMENT

This bill amends Section 215.1 to add a reference to the organizational clearance certificate necessary to obtain the veterans' organization exemption.

BACKGROUND

Senate Bill 1062 (Ch. 471, Stats. 2003) and Senate Bill 1607 (Ch. 224, Stats. 2006) amended various statutory provisions related to both the welfare and the veterans' organization exemptions to streamline the administration of these exemptions by eliminating duplicative review functions performed by the assessors and the Board. After the streamlining, first effective with claims filed on or after January 1, 2004, the Board determines whether an organization is eligible to receive the veterans' organization exemption and the county assessor determines whether the use of the property is eligible for the exemption. If the Board determines that an organization is eligible, the Board issues an Organizational Clearance Certificate for the claimant to provide with exemption claim forms filed in any of the 58 counties where the veterans' organization might own property. Section 254.6(a) and (b) expressly provide that the Board staff review claims for organizational clearance certificates for the veterans' organization exemption and issue the certificates to organizations that meet the requirements of Section 214.

COMMENT

Purpose. This provision to add a specific reference to the required organizational clearance certificate would ensure that veterans' organizations seeking the exemption are aware of the need to obtain a certificate from the Board when filing a claim with the assessor. This is intended to make the tax codes more user friendly and ensure that the exemption is not unnecessarily delayed.

TABLE OF SECTIONS AFFECTED

SECTIONS		BILL NUMBER	CHAPTER NUMBER	SUBJECT
Revenue & Taxation Code				
§62	Amend	SB 559	Ch. 555	CIO – Registered Domestic Partners
§62.11	Add	AB 1020	Ch. 277	CIO – Right of Redemption Period
§63.1	Amend	AB 402	Ch. 450	Parent-Child - Foster Children
§63.1	Amend	SB 1045	Ch. 449	Parent-Child – Principal Residence
§69.5	Amend	SB 1045	Ch. 449	Base Year Value – Claim Form
§211	Amend	AB 297	Ch. 225	Newly Planted Trees - Freeze
§215.1	Amend	SB 1045	Ch. 449	Veterans' Organization Exemption
§218	Amend	SB 38	Ch. 222	Disaster – Homeowners' Exemption
§218	Amend	SB 114	Ch. 223	Disaster – Homeowners' Exemption
§218	Amend	AB 62	Ch. 224	Disaster – Homeowners' Exemption
§441	Amend	SB 87	Ch. 180	Business Property Statement – Fractionally Owned Aircraft
§452	Amend	SB 87	Ch. 180	Business Property Statement – Use Tax
§480.8	Add	AB 402	Ch. 450	Residential Co-op Ownership Reporting
Article 7 (Commencing with §1160)	Add	SB 87	Ch. 180	Fractionally Owned Aircraft
§1603	Amend	AB 1042	Ch. 195	Assessment Appeal Applications
§5368	Add	SB 87	Ch. 180	Fractionally Owned Aircraft
Private Railroad Car Tax Law				
§11408.5	Add	AB 1748	Ch. 342	Innocent Spouse: Relief of Liability

TABLE OF SECTIONS AFFECTED (CONTINUED)

SECTIONS	BILL NUMBER	CHAPTER NUMBER	SUBJECT
Revenue & Taxation Code			
Timber Yield Tax Law			
§38454.5 Add	AB 1748	Ch. 342	Innocent Spouse: Relief of Liability