California State Board of Equalization,
Legislative and Research Division

LEGISLATIVE BULLETIN

PROPERTY TAX LEGISLATION
2012

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Assembly Bill 1589 (Huffman) Chapter 533

State Park Stewardship Act – Possessory Interest Exemption for Nonprofits

Effective January 1, 2013. Among its provisions, adds Section 201.7 to the Revenue and Taxation Code.

BILL SUMMARY

This bill, in part, ensures that a qualified nonprofit governmental entity entering into an operating agreement with the Department of Parks and Recreation with respect to a state park is acting as an agent of the state. As such, a taxable possessory interest is not created and the nonprofit organization will not incur any property tax liability.

Sponsor: Assembly Member Huffman

LAW PRIOR TO AMENDMENT

State Owned Property. Article XIII Section 3(a) of the California Constitution provides that property owned by the state is exempt from property taxation.

Possessory Interests. Revenue and Taxation Code (RTC) Section 107 sets forth the three essential elements that must exist to find that a person's use of publicly-owned tax-exempt property rises to a level of a taxable possessory interest. Those elements are independence, durability, and exclusivity.

Relevant to this bill, with respect to the element of independence, Section 107(a)(1) defines "independent" to mean "the ability to exercise authority and exert control over the management or operation of the property or improvements, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the property or improvements. A possession or use is independent if the possession or operation of the property is sufficiently autonomous to constitute more than a mere agency."

Property Tax Rule 20, an administrative regulation, specifies that "[t]o be sufficiently autonomous to constitute more than a mere agency, the possessor must have the right and ability to exercise significant authority and control over the management or operation of the real property, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the real property."

State Parks Operating Agreements with Nonprofit Organizations. Public Resources Code (PRC) Section 5080.42 authorizes the Department of Parks and Recreation (DPR) to enter into operating agreements with qualified nonprofit organizations for the development, improvement, restoration, care, maintenance, administration, or operation of a unit or units, or portion of a unit, of the state park system. PRC Section 5080.42(g) defines a "qualified nonprofit organization" as an organization that is all of the following:

- Exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.
- Its principal purpose and activity is to provide visitor services in state parks, facilitate public access to park resources, improve park facilities, provide interpretive and educational services, or provide direct protection or stewardship of natural, cultural, or historical lands, or resources.

- Is in compliance with the Supervision of Trustees and Fundraisers for Charitable Purposes Act, Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code.

AMENDMENTS

Nonprofit Organization Agent of the State. This bill adds Section 201.7 to the RTC to provide that a qualified nonprofit corporation that enters into an agreement with the DPR pursuant to subdivision (a) of Section 5080.42 of the PRC for the development, improvement, restoration, care, maintenance, administration, or operation of a unit or units, or portion of a unit, of the state park system shall be deemed to be an agent of the state for property tax purposes.

In addition, it expressly provides that any state-owned property, including possessory interests in that property, used or possessed by the qualified nonprofit organization for the development, improvement, restoration, care, maintenance, administration, or operation of a unit or units, or portion of a unit, of the state park system will remain exempt from property tax as state owned property.

IN GENERAL

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

RTC Section 107 establishes parameters within which assessors and judicial authorities determine the existence of taxable possessory interests. Generally, those determinations are made according to the facts and circumstances in each individual case.

RTC Section 107.6 requires that when the state or any local government enters into a written contract with a private party whereby a possessory interest subject to property taxation may be created, the private party must be notified in the contract of the potential property tax consequences. If this notification is not given in the contract, the party may recover damages from the contracting state or local government.

Independence – Agent of a Public Owner. Under Property Tax Rule 20, a possession, a right to possession, or a claim to a right to possession is independent if it is "sufficiently autonomous to constitute more than a mere agency." In other words, if the possessor acts as an agent of the public owner, the public owner's immunity or exemption from taxation extends to the possessor's activities, and there is no taxable possessory interest.

To constitute more than a mere agency, in the language of the rule, "the possessor must have the right and ability to exercise significant authority and control over the management or operation of the real property, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the real property." In general, independence may be measured by the amount of routine control and supervision enjoyed by the possessor, recognizing that the government necessarily retains ultimate control.

An agent is one who represents another in dealings with third persons, and the existence of an agency relationship is a question of fact. (California Civil Code Section

2295; Witkin Summary of California Law. 9th, "Agency and Employment," Section 3.) Whether an agency relationship has been created or exists is determined by the relation of the parties as they in fact exist by agreement or acts and the primary right of control is particularly persuasive. (*Pagan v. Spencer* (1951) 104 Cal.App.2d 588, 592- 593.) Factors to be considered to determine if an independent contractor is acting as an agent include the following: (i) whether the principal and agent are engaged in distinct occupations; (ii) the skill required to perform the agent's work; (iii) whether the principal supplies the workplace; (iv) whether the work is part of the principal's regular business; and (v) whether the parties intended to create an agency relationship."

Nonprofit Organizations and Public Parks. Existing law expressly provides for an exemption under the welfare exemption for certain land used as public parks where a nonprofit organization is involved:

- RTC Section 214.02 relates to property owned by a nonprofit and used as open space lands open to the public.
- RTC Section 231 relates to property owned by a nonprofit and leased to a government as a public park.
- RTC Section 236.5 relates to a public park leased by a nonprofit organization from a private owner.

BACKGROUND

AB 42 (Huffman, Ch. 450, Stats, 2011) added Section 5080.42 to the PRC to authorize the DPR to enter into operating agreements with nonprofit organizations to operate state parks. Legislative findings and declarations included with this newly enacted section of law state that “[a]s the search for stable funding sources continues in this current budget crisis, it is critical that all efforts be made to continue public access to state parks and to keep our parks open. Nonprofit organizations can be important partners in meeting those objectives, and where possible, they should be invited to assist the state with operating parks in order to keep them open.”

The Legislative Analyst's Office (LAO) issued a report "Strategies to Maintain California's Park System" in March 2012 related to budget cuts resulting in possible closure of some of the 278 parks in the state park system. http://www.lao.ca.gov/analysis/2012/resources/state-parks-030212.aspx

COMMENTS

1. **Purpose.** To enhance the capacity of the state to protect its valued state parks and the natural and cultural resources they contain, and to keep the parks open and accessible to the people of the state. The property tax provisions of this bill ensure that qualified nonprofit organizations that enter into agreements to operate state parks that were otherwise at risk of closure will not incur any property tax liability because the nonprofit organization is acting in the capacity of an "agent" of the state.

2. **This bill ensures that the operating agreements will not create a taxable possessory interest for the nonprofit organization taking over the operation of the state park**. Under RTC Section 107, to have a taxable possessory interest, the nonprofit organization must have "independence." This bill provides that the nonprofit organization is deemed to be an “agent” of the state. As an agent of the state, the nonprofit organization does not have the requisite “independence” and thus the interest is not subject to the property tax. Typically, the existence of an

agency relationship is a question of fact and the assessor would review the agreement and make a determination.

3. **A nonprofit organization can apply for the welfare exemption on a taxable possessory interest.** If any nonprofit organization was assessed a possessory interest for operating a state park, the nonprofit organization could subsequently apply for the welfare exemption on that assessment and receive a property tax exemption on the property under those provisions of law if they otherwise qualified.
4. **This bill is limited in application to parks in the state park system**. Furthermore, the provisions of this bill are limited in application to operating agreements entered into pursuant to PRC Section 5080.42(a).

Assembly Bill 1700 (Butler) Chapter 781

Change in Ownership Exclusion – Cotenancy Interests upon Death

Effective September 29, 2012. Adds Section 62.3 to the Revenue and Taxation Code.

BILL SUMMARY

This bill provides a principal residence cotenancy change in ownership exclusion for transfers between cotenants resulting from death.

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." Generally, a transfer of interest in property between two people that own real property due to the death of one results in a change in ownership in proportion to the percentage interest transferred unless the transfer qualifies for one of the many change in ownership exclusions available under existing law. These include exclusions for transfers of interests between persons that are spouses, between persons that are registered domestic partners, between persons that have a parent-child relationship, and between persons that own property in a joint tenancy form of ownership where the surviving joint tenant has original transferor status. (California Constitution Article XIIIA, Sec. 2; Revenue and Taxation Code Sections 60 – 69.5) However, under existing law, there are no exclusions from change in ownership for transfers of real property owned between two unrelated persons as tenants in common.

AMENDMENT

This bill adds Section 62.3 to the Revenue and Taxation Code to provide that a transfer of a co-tenancy interest, as defined, in real property from one cotenant to the other that takes effect upon the death of the transferor cotenant is excluded from reassessment as a "change in ownership" if the real property constitutes the principal residence of both cotenants. The proposed change in ownership exclusion is available if the following conditions are satisfied:

- **Principal Place of Residence.** The property constitutes the principal residence of both cotenants immediately preceding the transferor cotenant's death and both continuously resided at that residence for the one-year period immediately preceding the date of death. The transferee signs an affidavit (i.e., a claim form) under the penalty of perjury affirming that these requirements were met.
- **Recorded Ownership.** For the one-year period immediately preceding the transferor cotenant's death, both cotenants were owners of record of the property.
- **Form of Ownership.** The property is held in a tenancy in common or joint tenancy form of ownership by the cotenants, with no other individual holding title to the property. That is, two individuals own 100 percent of the real property in joint tenancy or 100 percent of the real property as tenants in common.
- **Death.** The transfer occurs due to the death of one of the cotenants and the surviving cotenant thereafter obtains a 100 percent ownership interest in the real property immediately after the transfer.

- **Acquisition Methods.** Upon the death of the transferor cotenant, the property is acquired via the transferor cotenant's will or trust; intestate succession; or by operation of law.

Other Exclusions Take Precedence. The cotenancy exclusion would not apply if any other provision in the Revenue and Taxation Code provides a change in ownership exclusion. For example, the interspousal, registered domestic partner, or parent-child exclusions, or the joint tenancy exclusion where the surviving joint tenant has original transferor status.

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, which established a new system of property taxation as described previously. The initiative only contained about 400 words. Related to this bill, subdivision (a) of Section 2 of the initiative provided:

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

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

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

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

Task Force on Property Administration. Following the passage of Proposition 13, the Assembly Revenue and Taxation Committee appointed a task force to study existing property tax statutes in light of Proposition 13, and 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 BOE 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.

Joint Tenancy – Original Transferor Status. Section 65 details change in ownership law as it applies to the creation, transfer, or termination of joint tenancy interests in property. Subdivision (b) of Section 65 excludes from change in ownership the creation of a joint tenancy or the transfer of joint tenancy interests if, after such creation or transfer, the transferors are among the joint tenants. In such a creation or transfer, the transferors become the "original transferors" and any subsequent transfer or termination of the joint tenancy interest will not result in a change in ownership if the interest vests entirely or in part in one or more of the original transferors. When the last original transferor's interest terminates, then there is a change in ownership of the entire property. (Rev. & Tax. Code §65(c))

The importance of "original transferor" status under Section 65(b) is that it determines the change in ownership consequences of future transfers of the joint tenants' interests in the property. As long as a person with "original transferor" status remains on title, the property will not be reassessed. Property Tax Rule 462.040 provides that co-owners of real property may become "original transferors" in the following ways:

- A & B take title to property as tenants in common -- then transfer to A & B as joint tenants; A & B become original transferors.
- A & B take title to property as joint tenants -- then A & B transfer to their revocable trusts for the benefit of each other, as joint tenants; A & B become original transferors**.**
- A transfers title to A & B as joint tenants -- A becomes an original transferor but not B. However if B transfers to his revocable trust for the benefit of A -- B becomes an original transferor.

Principal Place of Residence. 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 known as the "homeowners' exemption." Revenue and Taxation Code Section 218 details the qualifications for the homeowners' exemption. The homeowners' exemption is applied to a person's principal place of residence and eligibility is generally continuous once granted. It does not apply to a property owner's vacation or secondary home. A home receiving the homeowners' exemption which is subsequently vacated and rented out to others loses its eligibility for the exemption beginning with the next lien date. A homeowner's temporary absence from his or her home does not disqualify the home from being considered the person's continuous principal place of residence provided the home is not rented or leased to others as detailed in Letter to Assessors 82/50. Thus, for instance, if a person was hospitalized or confined to a convalescent home, the home would still be considered to be that person's continuous principal place of residence even if a relative or friend occupies the home in the capacity of a caretaker while the owner is away. Other instances of temporary absences from a principal place of residence, such as a person who spends weekends at a second home, a person who resides in an apartment during the work week, or a person who travels extensively, would not disqualify the home from being considered that person's principal place of residence and eligible for the homeowners' exemption.

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, several 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), §65
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)
SB 559	2007, Ch. 555	Registered Domestic Partners – Retrospective for 2000-2006 transfers	§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, *statutorily* provided since 1979	§63, §63.1
193	March 26, 1996	Grandparent–Grandchild	§63.1

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
AB 2735	2010	Transfers of principal place of residence - Transfers of interests between co-tenants upon death for a 10 year period.
AB 103	2009	Transfers of principal place of residence - Transfers of interests between co-tenants upon death for a 10 year period.
SB 153	2008	Transfers of principal place of residence - Transfers of interests between co-tenants upon death for a 10 year period. (Vetoed)
ACA 32 AB 2799	2006	Transfers of real property between siblings.
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	Would have codified provisions to modify "original transferor" status as it relates to joint tenancy exclusions.
SCA 9	2002	Transfers of principal place of residence between co-owners who resided together for three years - County optional.
ACA 55	1988	Transfers of principal place of residence between siblings who live together two years prior.
ACA 8	1987	Transfers of principal place of residence between siblings who live together two years prior.
AB 1419	1981	Transfers between family members – spouse, brother, sister, lineal ancestor, or lineal issue.

Additionally, a "Save Proposition 13" constitutional initiative amendment sponsored by Howard Jarvis in 1984, would have, among other things, excluded certain family transfers from change in ownership. That proposition failed to obtain voter approval.

PROP.	ELECTION	CHANGE IN OWNERSHIP EXCLUSION
36	Nov. 6, 1984	Transfers from the owner to parents, grandparents, grandchildren, stepparents, uncles, aunts, spouses, stepchildren, siblings, and lineal descendants.

As detailed in the previous tables, 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 mobile home are all examples of statutorily authorized exclusions.

COMMENTS

1. **Purpose.** To create a change in ownership exclusion for co-owners of principal places of residence in the event of one co-owner's death. With this bill, the Proposition 13 protected value of the home would be preserved. Thus, the surviving co-owner would continue to pay the same amount of property tax on their home after the other person's death.

2. **Amendments.** The **April 17, 2012** amendment made a nonsubstantive change to redraft the substance of former subparagraphs (A) and (B) of paragraph (1) of subdivision (a) of Section 62.3 into a single sentence, as suggested by the Assembly Revenue and Taxation Committee, to simplify the language in the bill.

3. **The proposed change in ownership exclusion would apply to any number of situations where two people own a principal place of residence and one person dies leaving his or her interest in the property to the other.** For example, seniors, veterans, or others who own a home together and choose not to marry because of the loss of various benefits; persons who choose not to marry for other reasons or may be unable to legally marry; persons who choose not to register as domestic partners; persons ineligible to register as domestic partners; persons with familial relationships, such as siblings or other relations; friends or companions; a person and his or her care provider; or any two people who live together to share the cost of housing would qualify.

4. **For co-owners that have owned and lived in their home for a number of years, a partial or full reassessment of the property to its current fair market value after one co-owner dies can result in a significant property tax increase.** A fundamental argument for Proposition 13 was that a person would not be "taxed" out of his or her home due to property taxes on the home becoming unaffordable if taxed at its current market value. Property tax assessments would remain predictable and increase no more than two percent per year.

5. **The reassessment consequences in these situations depend upon the facts of each case.** When the transfer between the decedent and the survivor does not qualify for any of the change in ownership exclusions available under existing law, the property must be reassessed. The percentage of reassessment to current market value, which will be determined as of the date of death, depends upon the form of ownership as well as other factors as detailed:

   Tenants in Common. In the case of real property held as tenants in common, a transfer of interest between the decedent and the survivor that had equal ownership interests in the property would be subject to a 50% reassessment. If the parties did not have equal ownership, then the percentage reassessment would be equal to the amount of the decedent's ownership interest in the property transferred to the survivor.

   Joint Tenancy. In the case of real property held in a joint tenancy, the percentage of the property subject to reassessment would either be 0%, 50% or 100% as follows:

- If the surviving joint tenant had original transferor status[1], then no reassessment would occur.
- If the surviving joint tenant did not have original transferor status, a 50% reassessment would occur.
- If the surviving joint tenant had been added to the title of the home after the decedent had first acquired the home and the surviving joint tenant did not thereafter obtain original transferor status, a 100% reassessment would occur. This is because no reassessment occurred at the time when the decedent initially added the survivor to the property's title as a joint tenant.

6. **The exclusion would only apply to transfers of property resulting from a death.** Transfers of interests in property between co-owners at other points in time would result in reassessment of the property if no other exclusion is available.
7. **The exclusion would only apply to a principal place of residence**. With respect to other types of real property jointly owned by the parties, such as a rental home or a commercial property, the property would be subject to reassessment if no other exclusion is available.
8. **The exclusion would not apply in the situation where two people shared a principal residence, but the survivor was not on title to the property**. If no other exclusion is available, a 100% reassessment to current market value will occur. Furthermore, both persons must have been owners of record for at least one year prior to the death.
9. **The exclusion would apply in the situation where only two people are on title to the property**. For example, in the case of a principal residence owned together by two unmarried persons and a child of one or both persons is also on title with a 1% interest, the exclusion would not apply.
10. **Claim Form.** To receive the exclusion the survivor would submit a signed affidavit (i.e., file a claim form) with the assessor**.** The affidavit affirms that the survivor (the transferee) resided with the transferor at that home for the one-year period immediately preceding the transferor's death.
11. **Pending Property Tax Rule Activity on Joint Tenancy Original Transferor Status.** In February 2012, the California Assessors' Association petitioned the BOE to revise amendments made in 1999 and 2003 to Property Tax Rule 462.040. The assessors noted additional complexities and nuances and an increase in inconsistent application of its provisions and understanding since the Rule changes, especially with regard to the administration of trusts and joint tenancy. The BOE heard the petition in March 2012 and moved the issue into the interested parties' process. The interested parties' process provides all tax practitioners with the opportunity to participate in any potential amendments. The first meeting with interested parties was scheduled for August 27, 2012. The petition submitted by the California Assessors' Association and other relevant documents regarding the requested amendments to Rule 462.040 are posted on the BOE's website at www.boe.ca.gov/proptaxes/rule462040.htm.

[1] When a person has "original transferor status" a termination of a joint tenancy interest does not result in a change in ownership of the property when the surviving joint tenant becomes the sole owner of the property by right of survivorship if the surviving tenant is an original transferor. (Rev. & Tax. Code §65(d))

Assembly Bill 2046 (Allen) Chapter 817

Change in Ownership Exclusion – Floating Home Marinas

Effective September 30, 2012. Adds Section 62.5 to the Revenue and Taxation Code.

BILL SUMMARY

This bill creates a change in ownership exclusion for the purchase of a floating home marina if the tenants of the marina are the purchasers, as specified.

Sponsor: Assembly Member Allen

LAW PRIOR TO AMENDMENT

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

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 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.

Floating Homes. Section 229 provides that a floating home is not a vessel but is treated as real property under Section 229 for property tax assessment purposes.

A "floating home marina" is defined in Civil Code Section 800.4 to mean "an area where five or more floating home berths are rented, or held out for rent, to accommodate floating homes. Excluded from this definition is (1) a marina where 10 percent or fewer of the berths are leased or held out to lease to floating homes and (2) a marina or harbor containing berths for fewer than 25 floating homes and managed by a nonprofit organization, where the rules and regulations of the marina are set by majority vote of the berth holders.

Mobilehome Parks: Resident Owned Park Conversions: With respect to mobilehome parks, existing law excludes certain transfers of mobilehome parks from change in ownership reassessments if the tenants who rent the individual spaces of the mobilehome park purchase it. Qualifying conversions to resident ownership permit the residents of the park to retain the base year value of the previous owner, rather than triggering a reassessment of the mobilehome park to current market value. Existing law also provides that once the park has been excluded from a change in ownership and the park has not been converted to condominium, limited equity, or cooperative ownership, then any transfer (after January 1, 1989) of the shares of stock or ownership interests in the entity which acquired the park results in a pro-rata change in ownership in the park real property for the portion of ownership interests which have transferred. In other words, once the residents who participated in the original purchase of the park sell or otherwise transfer their ownership interests in the park, that particular share in the park would be reassessed to current market value.

AMENDMENT

Resident Purchase Change in Ownership Exclusion. This measure adds Section 62.5 to the Revenue and Taxation Code to exclude from the definition of "change in ownership" a transfer of a floating home marina to a nonprofit corporation, stock cooperative corporation, limited equity stock cooperative, or other entity formed by the tenants of a floating home marina for the purpose of purchasing the floating home marina, provided that the individual tenants who were renting at least 51 percent of the berths in the floating home marina prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity that acquires the floating home marina.

"Floating home marina" is defined by cross reference to Civil Code Section 800.4.

Subsequent Changes in Ownership. Once an exclusion has been provided, then any transfer of shares of the voting stock of, or other ownership or membership interests in, the entity that acquired the floating home marina, as specified, is a change in ownership of a pro rata portion of the real property of the floating home marina. As an exception, this pro-rata change in ownership does not apply, if the transfers are for the purpose of converting the floating marina to condominium, stock cooperative ownership, or limited equity cooperative ownership. Additionally, a pro-rata change in ownership does not apply if the transfer is otherwise excluded from change in ownership under Section 62 (specified definitional exclusions), 63 (interspousal transfers) or 63.1 (parent-child transfers).

Reporting. If the marina does not use recorded deeds to transfer ownership interests in the berths, then any new resident owner or other purchaser or transferee of a floating home within a floating home marina is required to file a change in ownership statement or a preliminary change in ownership report within 30 days. Additionally, the marina itself must annually report specified information concerning its owners and the floating homes located in the marina with the county assessor by February 1.

IN GENERAL

California's system of property taxation under Article XIII A of the State Constitution (Proposition 13) values property at its 1975 fair market value, with annual increases limited to the amount of inflation or 2%, whichever is less, until the property changes ownership or is newly constructed. At the time of the ownership change or 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."

Exclusion for Sale of Undivided Mobilehome Park to Resident Owned Entity-§62.1(a)(1). A transfer on or after January 1, 1985 of a mobilehome park to a specified legal entity, formed by the tenants of a park, for purposes of purchasing the park, is excluded from change in ownership provided that any transfer of the park on or after January 1, 1989 involves 51% ownership of the acquiring legal entity by tenants renting at least 51% of the spaces in the park prior to the transfer. Under Section 62.1(b)(1), if the park has been excluded from a change in ownership and the park has not been converted to condominium, limited equity, or cooperative ownership, then any transfer (after January 1, 1989) of the shares of stock or ownership interests in the entity which acquired the park in accordance with Section 62.1(a), results in a pro rata change in ownership in the park real property equal to the portion of ownership interests which have transferred. As an exception, this pro rata change in ownership does not take place, if the transfers are for the purpose of converting the park to condominium or cooperative ownership.

Exclusion for Sale of Individual Rental Spaces to Individual Residents - Section 62.1(a)(2). Transfers of rental spaces in a mobilehome park to individual tenants of the spaces are also excluded from change in ownership provided that (1) at least 51% of the spaces are purchased by individual tenants renting their spaces prior to purchase, and (2) the individual tenants form, within one year after the first purchase of a rental space by a tenant, a resident organization, defined in Health & Safety Code Section 50781. If the tenant(s) notify the assessor of their intent to comply with these conditions, there is no reappraisal of any spaces purchased by individual tenant(s) during that time period. The assessor may levy escape assessments, if the requirements for the exclusion are not met. This exclusion applies only to parks in operation for five years or more, and to qualifying transfers on or after January 1, 1985.

Exclusion for Interim Holding By Non-Resident Owned Entity - Section 62.2. In some cases, prior to the transfer to the tenants directly or to an entity owned by the tenants, there is an interim transfer of the mobilehome park to a non-tenant owned entity. This entity helps facilitate the purchase and conversion to a resident-owned park. Section 62.2 allows for application of the change of ownership exclusion in Section 62.1 upon the occurrence of an "interim transfer" of the mobilehome park to an entity (including a governmental entity) not owned by the park residents. This exclusion permits an initial transfer to an entity not formed by the tenants, followed within 18 months, by a transfer to one that is formed by the tenants or to the individual tenants (§62.1, above). For parks originally transferred on or after January 1, 1993, the interim time period is extended to 36 months, and for parks located within disaster areas, the time period is extended to 76 months.

BACKGROUND

Change in Ownership Exclusions. 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, several other exclusions were statutorily provided as follows:

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), §65
AB 1488	1979, Ch. 242	Interspousal Transfers – including marriage dissolutions (subsequently amended into Constitution via Prop. 58)	§63

BILL	YEAR	CHANGE IN OWNERSHIP EXCLUSION	R&T CODE
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)
SB 559	2007, Ch. 555	Registered Domestic Partners – Retrospective for 2000-2006 transfers	§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, *statutorily* provided since 1979	§63, §63.1
193	March 26, 1996	Grandparent–Grandchild	§63.1

COMMENTS

1. **Purpose.** To ensure that whenever tenants successfully arrange to purchase a floating home marina, property taxes on the marina will remain unchanged.
2. **Amendments.** The May 21, 2012 amendments provided for the reassessment of subsequent pro rata changes in ownership in the floating home marina. As introduced, this bill was silent as to the assessment treatment of the marina after the initial exclusion. With respect to mobilehome parks, after the original change in ownership exclusion was created, the Legislature provided that pro rata changes of ownership in resident-owned mobilehome parks would be subject to reassessment. The amendments addressed this issue by adding provisions for floating home marinas that are patterned after those for mobilehome parks, as found in Section 62.1(b).

Assembly Bill 2207 (Gordon) Chapter 863

Welfare Exemption – Natural Lands Conservation Management

Effective September 30, 2012. Amends Section 214.02 of the Revenue and Taxation Code.

BILL SUMMARY

This bill ensures that in determining eligibility for the property tax welfare exemption available for property being preserved in its natural state, activities resulting in revenues and leases of property furthering the conservation objectives of the property as provided in a qualified conservation management plan, as specified, will not disqualify the property.

Sponsor: California Council of Land Trusts

LAW PRIOR TO AMENDMENT

Revenue and Taxation Code Section 214.02 establishes the property tax exemption for property in its natural state as part of the constitutionally based welfare exemption. These are:

- Properties that are used exclusively for the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific or educational interest, or
- Open-space lands used solely for recreation and for the enjoyment of scenic beauty.

These properties must be open to the general public subject to reasonable restrictions concerning the needs of the land.

The exemption does not apply to property reserved for future development. Additionally, it does not apply to a nonprofit organization that owns more than 30,000 acres in a single county if is not fully independent, as specified, of the owner of adjacent taxable lands.

To qualify, the property must be owned and operated by a scientific or charitable organization with the primary interest of preserving those natural areas and meeting all the requirements of Section 214.

AMENDMENT

This bill adds subdivision (d) to Section 214.02 to provide that in determining whether the property is used for the actual operation of the exempt activity as required by subdivision (a), consideration shall not be given to the use of the property for either of the following:

- Activities resulting in revenues, whether direct or in kind, if those activities further the conservation objectives of the property as specified in its qualified conservation management plan. Those revenues include those revenues derived from grazing leases, hunting and camping permits, rents from persons performing caretaking activities who reside in dwellings on the property, and admission fees collected for purposes of public enjoyment.

- Any lease of the property for a purpose furthering the conservation objectives of the property as provided in a qualified conservation management plan for the property.

Any such activity or lease may not generate unrelated business income.

A "qualified conservation management plan" means a plan that:

- Identifies that the foremost purpose and use of the property is for the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific or educational interest, or as open-space lands used solely for recreation and for the enjoyment of scenic beauty.
- Identifies the overall conservation management goals, including, but not limited to, identification of permitted activities, and actions necessary to achieve the goals.
- Describes the natural resources and recreational attributes of the property as well as potential threats to the conservation values or areas of special concern.
- Includes a timeline for planned management activities and regular inspections of the property.

IN GENERAL

Welfare Exemption. Under Section 4(b) of Article XIII of the California Constitution, the Legislature has the authority to exempt property (1) used exclusively for religious, hospital, or charitable purposes, and (2) owned or held in trust by nonprofit organizations operating for those purposes. This exemption from property taxation, popularly known as the *welfare exemptio*n, was first adopted by voters as a constitutional amendment on November 7, 1944. With this amendment, California became the last of 48 states in the country to provide such an exemption from property taxes.

When the Legislature enacted Revenue and Taxation Code Section 214 to implement the Constitutional provision in 1945, a fourth purpose, *scientifi*c, was added to the three mentioned in the Constitution. Section 214 parallels and expands upon the Constitutional provision by exempting property used exclusively for the stated purposes (religious, hospital, scientific, or charitable), owned by qualifying nonprofit organizations if certain requirements are met. An organization's *primary* purpose must be either religious, hospital, scientific, or charitable. Whether its operations are for one of these purposes is determined by its activities. A qualifying organization's property may be exempted fully or partially from property taxes, depending on how much of the property is used for qualifying purposes and activities. Section 214 is the primary welfare exemption statute in a statutory scheme that consists of more than 20 additional provisions. Over the years, the scope of the welfare exemption has been expanded by both legislation and numerous judicial decisions.

The Constitution and statutes impose a number of requirements that must be met before property is eligible for exemption. In general:

- The property must be irrevocably dedicated to religious, hospital, scientific, or charitable purposes.

- The owner must not be organized or operated for profit and must be qualified as an exempt organization, under a specific federal or state statute, by the Internal Revenue Service or the Franchise Tax Board.
- No part of the net earnings of the owner may inure to the benefit of any private shareholder or individual.
- The property must be used for the actual operation of the exempt activity.

BACKGROUND

Natural State Properties. Section 214.02 was added during the 1971 special session of the Legislature. This provision had been included in bills heard during the 1971 regular session (AB 1264, Biddle and AB 185, Bagley), and was the product of a 1970 Assembly Revenue and Taxation Committee interim hearing on the subject of natural lands preservation. In 1970, the Committee held hearings and conducted studies to investigate alternative tax policies that would have a positive environmental influence on the future of the state. The staff report to the committee concluded that, due to an over reliance on property tax revenues, local governments were reluctant to preserve open space areas, recreational areas, and ecologically valuable areas. Hence, land was becoming a vanishing resource subject to irreparable damage. (Source: The Fiscal Implications of Environmental Control; an Appendix to Final Report of the Assembly Committee on Revenue and Taxation, Interim Activities (1970) pp. 90-92.)

Sunset Date History. The intent of the original legislation enacting Section 214.02 was to assist nonprofit organizations that purchased open-space and similar lands, held the lands temporarily, and then sold or donated the lands to public agencies for permanent use as park facilities. A sunset date was included in the original legislation as a result of a Senate Revenue and Taxation Committee hearing, to ensure that the charitable organizations sold or donated the lands rather than hold them indefinitely. Since that time, it appears that in some cases charitable organizations may be the permanent owners of lands due, in part, to the limited ability of public agencies to acquire additional lands. The sunset date has been continuously extended since then as noted in the following table.

Bill	Author	Years Extended	Sunset Year
AB 971 (Ch. 67, Stats. 1982)	Bergeson	1	1982
AB 2308 (Ch. 1485, Stats. 1982)	Bates	5	1987
AB 2890 (Ch. 1457, Stats. 1986)	Hannigan	5	1992
AB 2442 (Ch. 786, Stats. 1992)	Baker	10	2002
SB 198 (Ch. 533, Stats. 2001)	Chesbro	10	2012
AB 703 (Ch. 575, Stats. 2011)	Gordon	10	2023

When the extension of the welfare exemption was discussed in 1982, concern was expressed that the exemption primarily benefited the former owner of 42,000 acres of land on Santa Catalina Island, who at that time was the sole owner of large landholdings in the middle of the exempt property. It was argued that this situation gave the owner the benefits of a large estate without having to pay tax on the entire property. Thus, limited provisions were added to prevent the operation of the exempt property from inuring to the benefit of the adjacent land owner. Today, many organizations throughout the state benefit from the exemption, and it is no longer viewed as primarily benefiting one particular property.

The constitutionality of Section 214.02 was questioned and upheld in *Santa Catalina Island Conservancy* v. *County of Los Angeles* 126 Cal.App.3d 221(1981) on the basis that preservation of natural environments and open space recreational opportunities for the benefit of the general public is a "charitable" purpose.

COMMENTS

1. **Purpose.** This bill ensures that certain activities do not disqualify a nonprofit organization from the welfare exemption so long as the activity is (1) consistent with the conservation purposes of the exemption, and (2) consistent with the conservation management plan for the property. It is intended to directly address activities such as cattle grazing and hunting of invasive species as allowable activities provided they further conservation purposes. Furthermore, it is intended to promote statewide uniformity in the administration of the exemption and ensure that properties will be treated similarly throughout California.

2. **Amendments.** The July 5, 2012 amendments delineated specific qualifying activities to narrow the scope of the bill to limit any unintended consequences.

3. **Issue.** The sponsor reports that some counties do allow the property tax exemption, in whole or part, if the nonprofit organization receives income on the property from grazing leases and hunting fees.

4. **County assessors determine whether the use of a property qualifies for the welfare exemption and BOE opinions are advisory in nature.** As of January 1, 2004, the function of determining welfare exemption eligibility with respect to the use of a particular property solely rests within the discretion of the county assessor (RTC Section 254.5).

5. **Exclusive Use Requirement: "Incidental To and Reasonably Necessary For."** Section 214 provides an exemption for property "used exclusively" for charitable purposes. The Revenue and Taxation Code does not specifically define the term "used exclusively;" however, the courts have done so in a series of decisions. The California Supreme Court, following a rule of strict, but reasonable construction, has construed "exclusively used" in Section 214, subdivision (a), to include any use of the property which is "incidental to and reasonably necessary for the accomplishment of the [exempt] purpose." (*Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 736.) Thus, the exclusive use requirement means that a qualified organization's ongoing use of its property must be for exempt purposes and activities, and any other uses of the property must be related to and reasonably necessary for the accomplishment of the exempt purpose.

6. **Cattle Grazing**. On the issue of cattle grazing, there is disagreement over whether it is incidental to and reasonably necessary for the accomplishment of the exempt purposes. This bill seeks, in part, to address this issue legislatively. The BOE has issued two legal opinions (only one of which is annotated) to two counties concerning cattle grazing rights on properties for which a nonprofit organization claimed the welfare exemption and opined that, pursuant to the particular facts in those two cases, the property was not eligible for the welfare exemption on multiple grounds including that the grazing was not incidental. See Annotation 880.0129

http://www.boe.ca.gov/proptaxes/pdf/880_0129.pdf. These opinions are advisory in nature and are not binding on any county assessor.

7. **A use that is "incidental to and reasonably necessary for" the accomplishment of the exempt purpose does not disqualify a property from the welfare exemption.** However, there is no express threshold or standard in law as to what "incidental to and reasonably necessary for" is and the interpretation of this phrase could vary. This could explain why some counties have allowed grazing and hunting on certain properties while others have not. Both the level of the activities as well as the county's judgment as to that activity might differ. In the two BOE legal opinions noted previously, the cattle grazing was not considered to be incidental according to the facts in those cases. The proponents assert that any activity or lease that furthers the conservation objectives as provided in the conservation management plan for the property should be considered incidental to and reasonably necessary for the accomplishment of the preservation of these lands.

8. **Grazing as a management tool.** In the two cases noted previously**,** nonprofit organizations claimed, but were not successful, in their argument that the cattle grazing leases are a management tool incidental to its land preservation purposes and essential to the proper management of the property. For example, they note that grazing is often an important activity to maintain native grasses and wildflowers as well as provide fuel control for fire prevention. Hence, this bill was introduced to seek legislation that directly addresses their concern.

9. **Related Court Cases.** In support of their position**,** proponents note the case of *San Francisco Boys' Club, Inc. v. Mendocino County* (1967) 254 Cal.App.2d 548. In that case, the court of appeal affirmed the trial court's finding that the entire Boys' Club's property, almost 2,000 acres, was necessary for and was used for the operation of a boy's camp and was within the purposes of the welfare exemption, notwithstanding the fact that logging operations on the property, conducted by independent contractors hired by the purchaser of the timber, had occurred. As to the logging operations, the court of appeal stated at pages 559 and 560:

   > …, the charitable entity must be permitted to manage its property as a prudent owner. If incidental to that management it is reasonable to harvest the timber growing on the property, such an operation is compatible with and not hostile to its use for the charitable activity. Being a part and parcel of that use, it does not detract from, or destroy, the exclusiveness of that use. This construction is supported by the following principle: "Under the cases, it is certainly well settled that however strict the courts may be in determining whether the use of property brings it within the exemption at all, if the court once holds that the property generally qualifies for the exemption, it will be extremely liberal in holding that some incidental use does not take it out of the exemption."

   With respect to hunting and charging fees, proponents note the case of *Santa Catalina Island Conservancy v. Los Angeles County* 126 Cal. App. 3d 221 (1981). In that case, the court held that a substantial portion of Santa Catalina Island, preserved as open-space land for recreational and ecological purposes, was used exclusively for charitable purposes, although motor tours and a hunting program were conducted by independent contractors on the property. The court ruled that these uses of the property were reasonably necessary and incidental to the preservational, instructive and recreational purposes of the Conservancy. The tours provided access to many persons to see and enjoy the property; and the hunting program, in addition to its recreation value, was a game management tool.

10. **Should a particular property not qualify for the welfare exemption, either in full or in part, other preferential assessments are available.** Properties may be eligible for a Williamson Act Contract or an Open Space Easement Contract. Additionally, there are a variety of programs offered by the Wildlife Conservation Board http://www.wcb.ca.gov/Programs/, including the Rangeland, Grazing Land and Grassland Protection Act of 2002 which provides protections through the use of conservation easements http://www.wcb.ca.gov/Rangeland/index.html. A conservation easement registry is available at www.easements.resources.ca.gov.

11. **From time to time the Legislature has enacted additional statutes specifying that certain types of uses of property do not disqualify a property from receiving the welfare exemption.** For instance, specific instances relating to museums (RTC Section 214.14), using property to hold bingo games provided the proceeds from the games are used exclusively for the charitable purposes of the organization (RTC 215.2), allowing the property to be used as a polling place (RTC 213.5), allowing occasional (irregular or intermittent basis) fundraising activities (RTC 214(a)(3)(A); allowing meetings to be held by other nonprofits (RTC 214(a)(3)(D)); and allowing certain uses related to the needs of hospitals (RTC 214.11).

Assembly Bill 2688 (Committee on Revenue and Taxation) Chapter 362

Air Taxi Definition

Effective January 1, 2013. Among its provisions, amends Section 1154 of the Revenue and Taxation Code.

BILL SUMMARY

This bill updates the definition of "air taxi" in the Property Tax Law.

Sponsor: California Assessors' Association

LAW PRIOR TO AMENDMENT

Article 6 of Part 2 of the Revenue and Taxation Code (beginning with Section 1150), specifies the provisions of law for allocating the value of certificated aircraft and scheduled air taxis to California taxing agencies. The allocation formula, set forth in Section 1152, is a means of allocating the full cash value of the aircraft of a carrier controlled on the lien date by measuring the planes' activities within a California taxing agency during a specified period in relation to their total activity during this specified period. The formula is composed of two factors: (1) flight and ground time and (2) arrivals and departures. The flight and ground time factor is weighted 75 percent, and the arrivals and departures factor is weighted 25 percent. Because aircraft used by air carriers regularly fly into and out of California and between the various California counties, the property taxation of the aircraft must be fairly apportioned. Article 6 was designed to provide a uniform formula for apportioning taxation of these aircraft among different taxing jurisdictions.

Air Taxis. Section 1154 defines "air taxi" as aircraft used by an air carrier which does not use aircraft having a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds in air transportation and which does not hold a certificate of public convenience and necessity or other economic authority issued by the Federal Aviation Administration, or its successor.

Scheduled Air Taxi Operations – Allocation Formula. Section 1154(b) provides that air taxis operated in scheduled air taxi operations are not to be taxed under Part 10 of the Revenue and Taxation Code (beginning with Section 5301), which relate to the provisions of law for the assessment and taxation of general aircraft. Section 1154(b) expressly provides that they are to be assessed using the allocation formula of Section 1152. Part 10 does not have an allocation formula, but instead provides for value allocation to the county where the aircraft is habitually situated. Section 5303 excludes from the definition of "aircraft" an air taxi as defined in subdivision (a) of Section 1154.

Other Air Taxis – Assessed where Habitually Situated. Section 1154(c) provides that all other air taxis are to be assessed in the county where the aircraft is habitually situated. Section 5362 similarly provides that an aircraft, as defined in Section 5303, is to be assessed where it is habitually situated.

AMENDMENT

This bill revises the definition of "air taxi" as used in Section 1154 to mean aircraft used by an air carrier that does not use aircraft in air transportation with a maximum passenger capacity of 60 seats or a maximum payload capacity of more than 18,000 pounds, and which holds a certificate of public convenience and necessity or other economic authority used by the United States Department of Transportation, or its successor.

BACKGROUND

In 1968, Assembly Bill 1257 (Chapter 1306) added Article 6 to Chapter 5 of Part 2 of the Revenue and Taxation Code to outline the procedures for allocating the value of certificated aircraft and air taxis to California taxing agencies.

Section 1154 was subsequently amended the following year by Senate Bill 322 (Chapter 732) to add "which are operated in scheduled air taxi operations" in subdivision (b) and add subdivision (c) to exclude nonscheduled air taxis from the allocation formula.

In 1977, AB 878 (Chapter 921) amended Section 1154 to substitute "having a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds" for "whose maximum certificated takeoff weight is greater than 12,500 pounds" in subdivision (a). Section 1154 (a) was again amended in 2011 by SB 947 (Chapter 351) to update the referenced federal agency from the Civil Aeronautics Board of the United States to the Federal Aviation Administration and delete the reference to the California Public Utilities Commission.

COMMENTS

1. **Purpose.** To define "air taxi" in accordance with the definition used by the Department of Transportation (DOT) for an air taxi operator. The DOT defines an air taxi operator as a company which operates aircraft originally designed to have no more than 60 passenger seats or a cargo payload of 18,000 pounds and carries cargo or mail on a scheduled or charter basis, and/or carriers passengers on an on-demand or limited schedule basis only.
2. **Increases passenger and payload capacity.** This bill increases the maximum passenger capacity from 30 seats to 60 seats and increases the maximum payload capacity from 7,500 pounds to 18,000 pounds. The bill also updates the reference to the Federal Aviation Administration to the United States Department of Transportation which is the agency charged with issuing economic authority for air carriers. Additionally, a certificate of public convenience and necessity for scheduled or charter operations are a type of economic authority issued by the DOT.

TABLE OF SECTIONS AFFECTED

SECTIONS		BILL NUMBER	CHAPTER NUMBER	SUBJECT
Revenue & Taxation Code				
62.3	Add	AB 1700	781	Change in Ownership Exclusion - Cotenancy Exclusion Upon Death
62.5	Add	AB 2046	817	Change in Ownership Exclusion - Floating Home Marinas
201.7	Add	AB 1589	533	Possessory Interest - State Parks
214.02	Amend	AB 2207	863	Welfare Exemption - Natural Lands
1154	Amend	AB 2688	362	"Air Taxi"