



*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 2013

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Assembly Bill 551 (Ting) Chapter 406

Urban Agricultural Incentive Zones

Effective January 1, 2014. Adds Chapter 6.3 (commencing with Section 51040) to Part 1 of Division 1 of Title 5 of the Government Code, amends Section 402.1 of, and adds Section 422.7 to, the Revenue and Taxation Code.

BILL SUMMARY

This bill allows cities and counties to create Urban Agriculture Incentive Zones and offer landowners preferential property tax assessment if the landowner restricts urban land for small-scale agricultural use.

Sponsor: San Francisco Urban Agriculture Alliance

LAW PRIOR TO AMENDMENT

The California Constitution¹ authorizes the Legislature to designate as “open space land” property that produces food or fiber. The designation promotes the conservation, preservation, and continued existence of this land by allowing property tax benefits when its use is enforceably restricted. For property tax purposes, the land’s value must be determined on a basis consistent with the imposed restrictions and uses. The Williamson Act is the most commonly used program to restrict land use for agricultural purposes in exchange for preferential property tax assessment.

The same constitutional provision similarly authorizes the Legislature to offer preferential property tax assessment to designated historically significant property to promote its conservation. This program is referred to as the Mills Act Program.

Currently no special assessment provisions apply to land used for agricultural pursuits in urban areas. This property is assessed at its Proposition 13 protected value (i.e., factored base year value) or current market value, whichever is lower.

Annual Assessment: Lowest of Three Values. The law outlines a methodology to determine the value of Williamson Act and Mills Act properties for assessment purposes that provides property tax savings to property owners entering into the contracts. Moreover, the law ensures that program participants will not be assessed at a greater value under the contract than they would have been otherwise. Each year the assessor reviews the contract property and assesses it at the lowest of three values:

- Williamson Act or Mills Act value²
- Current fair market value³
- Factored base year value⁴

Enforceable Restrictions. The law requires the assessor to consider the effect of any enforceable restrictions when determining a property’s fair market value.⁵ Additionally, in the assessment of *land*, the assessor must consider the effect of any enforceable

¹ California Constitution Article XIII, Section 8.

² Revenue and Taxation Code (RTC) Sections 423 and 439.2.

³ RTC Section 110.

⁴ RTC Section 110.1.

⁵ RTC Section 110(a).

restrictions.⁶ Certain recorded contracts with governmental agencies regarding land use, including Williamson Act contracts, are excluded from this land-assessment provision because other provisions of law governing Williamson Act properties' assessed value supersede it.

AMENDMENTS

Urban Agriculture Incentive Zones. This bill allows property owners and a city, county, or city and county (i.e., San Francisco) to enter into a contract to restrict vacant, unimproved, or blighted land in urban areas, as specified, for small-scale agricultural use. The contracts must be entered into on or before January 1, 2019. Along with other specifications, the contract must:

- restrict land use to uses consistent with urban agriculture,
- require the entire property subject to contract to be dedicated to agricultural use,
- prohibit any dwellings, and
- specify an initial term of at least five years.

The bill designates land under the newly created program as “open-space land” that is enforceably restricted within the meaning of the constitutional provision allowing preferential property tax assessment. *RTC §422.7(a)*

County Assessor Valuation. During the contract term, this bill requires open-space land subject to an urban agricultural incentive zone contract to be valued for assessment at the rate based on the average per-acre value of irrigated cropland in California, as most recently published by the National Agricultural Statistics Service of the United States Department of Agriculture. The assessment will be adjusted proportionally to reflect the acreage under contract. *Government Code (GC) §51040.3, RTC §422.7*

This bill expressly excludes a recorded urban agriculture preserves contract from the provisions related to valuing land where an enforceable restriction exists. Instead, the assessor must use the newly established assessment methodology based on a pro rata per-acre rate. *RTC §402.1(a)(2), §422.7*

BOE Notification. The bill requires the BOE to post the per-acre land value as published by the National Agricultural Statistics Service of the United States Department of Agriculture on its Internet Web site. The value must be posted within 30 days of publication. Additionally, no later than January 1 of each assessment year, the BOE must provide the per-acre value to assessors. *RTC §422.7(c)*

Annual Land Value Assessment: Lowest of Three Values. The bill ensures that property under contract will be assessed at the lowest of three values as of each lien date. *RTC §422.7(b):*

- Value using published per-acre rate. *RTC §422.7*
- Current fair market value. *RTC §110*
- Factored base year value. *RTC §110.1*

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

⁶ RTC Section 402.1(a) – specific to *land* assessment.

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 that potentially creates a possessory interest subject to property taxation, the contract must identify the potential property tax consequences to the private party. If the contract does not provide this notification, 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.⁷ Whether an agency relationship has been created or exists is determined by the relationship of the parties as they in fact exist by agreement or acts, and the primary right of control is particularly persuasive.⁸ Factors to consider 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 a 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

⁷ California Civil Code Section 2295; Witkin Summary of California Law, 9th, "Agency and Employment," Section 3.

⁸ *Pagan v. Spencer* (1951) 104 Cal.App.2d 588, 592- 593.

from a private owner.

Property Taxation: California Land Conservation Act (Williamson Act). Under the Williamson Act,⁹ landowners may enter into contracts with participating cities and counties to restrict the land to agricultural or open-space uses. The contract must specify a minimum 10-year term with automatic yearly extensions unless specific action to remove the property from the program is taken (i.e., nonrenewal or immediate cancellation). In exchange for entering into these contracts, the assessor values the land and any living improvements (trees and vines) according to income earning ability. The law provides the assessor with a formula to value the land.¹⁰ The valuation method capitalizes the income the land produces from its agricultural use. The statute details how to determine income and specifies the appropriate capitalization rate.

Generally, the law imposes a fee to cancel a Williamson Act contract to allow other uses of the land, such as development, before the contract term ends. The fee is 12.5% of the land's current market value. In certain instances, however, the board of supervisors or city council may waive the cancellation fee. The county assessor determines value for purposes of the cancellation fee.¹¹

Farmland Security Zones. The law also provides for Farmland Security Zone Contracts. These contracts are for a 20-year term and require the assessor to value land subject to the contract at 65% of the value calculated using the Williamson Act value methodology.¹²

Mills Act Program. The Mills Act¹³ authorizes cities and counties to enter into contracts with an owner of qualified historical property to restrict property use. In exchange for a lower assessed value, the owner pledges to restore, maintain, and protect the property's historical and architectural character.

When valuing Mills Act contract property, the law prohibits a valuation of the enforceably restricted historical property based on sales data and instead requires the property to be valued by a prescribed income capitalization method. The statute contains specific instructions with regard to the income to be capitalized, the capitalization rate, and the capitalization technique.¹⁴

COMMENTS

1. **Purpose.** To provide a property tax benefit to private landowners to encourage them to make more land available for urban agriculture.
2. **This bill requires the county assessor to value land subject to an urban agriculture incentive zone contract using a methodology prescribed in statute during the contract term.** Specifically, in valuing land subject to an urban agriculture incentive zone contract, assessors will use the United States Department of Agriculture's National Agricultural Statistics Service published land values for the average market value for irrigated cropland in California.

⁹ GC Section 51200 et. seq.

¹⁰ RTC Section 423.

¹¹ GC Section 51283.

¹² RTC Section 423.4 and GC Section 51296.

¹³ GC Section 50280 et. seq.

¹⁴ RTC Sections 439 to 439.4.

3. **A codified valuation methodology provides certainty and predictability for landowners and assessors.** The valuation of urban land that is otherwise vacant, unimproved, or blighted and subsequently restricted to agricultural uses could present a complex appraisal problem for assessors in some cases. Each local government could establish its own criteria and contract conditions which would require analysis. An impediment to using the income approach to value would be a lack of comparable sales of “urban agriculture” properties to develop a capitalization rate. Given that the required annual appraisal would be difficult, consume limited staff resources, and require numerous assumptions, a codified assessment methodology using preexisting data could simplify the process and make it cost effective. Absent a codified methodology, the method used to perform this complex appraisal could lack uniformity.
4. **Current market value of irrigated cropland statewide.** Proponents note that basing the land assessment on the statewide average per-acre market value for irrigated cropland is a reasonable and cost effective method to determine the value of the urban land consistent with its restrictions and uses. Further, according to BOE data on per-acre Williamson Act land values for various counties, this measure of value results in a greater per-acre value, which seems reasonable given its urban location. The following table lists the California land values as determined by the USDA National Agricultural Statistics Service, for [recent years](#). Note that the value can increase or decrease from year to year.

Year	Irrigated Cropland Per-Acre Market Value
2013	\$12,500
2012	\$12,000
2011	\$11,500
2010	\$11,100
2009	\$11,600
2008	\$12,300

5. **Annual Posting and Publication.** The BOE’s duties under this bill are administrative and would not be problematic. Each August, the USDA publishes the [needed data](#) for the following year on its website. The BOE would be able to post a link to the report and inform county assessors with an annual Letter to Assessors.
6. **Cancellation Fee Duties.** Although not stated, if a contract cancellation fee were imposed, presumably assessors would need to assist the city, county, or city and county to determine the amount to charge. The fee is based on the cumulative value of the property tax savings prior to cancellation.
7. **Placing property under contract would not lead to an immediate assessment reduction.** However, for the lien date for the *following* fiscal year, the assessment of these lands would be reduced if the proposed pro rata per-acre value results in a value that is less than its Proposition 13 protected value (factored base year value).

8. **Any improvements would be assessed under the provisions of existing law.** The proposed preferential property tax assessment provisions are limited to the land portion of the property’s assessment.¹⁵ The bill specifies that structures (i.e., improvements) that support agricultural activity may be used under the contract terms. Thus, this bill does not impact the assessment of any pre-existing or subsequently constructed structures. Additionally, any business personal property related to the property remains subject to property tax.
9. **This bill limits the assessor’s role to the assessment function.** Establishing a county ordinance, designating individual properties as urban agricultural preserves, determining whether a property is eligible (within Census Bureau urbanized boundaries, size requirements), setting the contract terms, entering into the contract, and contract enforcement are outside the purview of the assessor’s function.
10. **As of the 2010 US Census, the following urbanized areas have a population exceeding 250,000.** [Detailed maps](#) of the urbanized area boundaries are available on the Census Bureau website. The urbanized area boundaries cross county borders and may include nearby cities, towns, and enclaves. The bill specifies that “urban” means an area *within* the boundaries of an urbanized area that includes at least 250,000 people. It is unclear if all property within the US Census map boundaries is eligible or if only that subset of property *within* the boundaries meeting the population threshold level is eligible.
 - **Southern California Areas:** Los Angeles-Long Beach-Anaheim, San Diego, Riverside-San Bernardino, Mission Viejo-Lake Forest-San Clemente, Bakersfield, Murrieta-Temecula-Menifee, Oxnard, Indio-Cathedral City, Lancaster-Palmdale, Victorville-Hesperia, and Santa Clarita.
 - **Northern California Areas:** San Francisco-Oakland, Sacramento, San Jose, Fresno, Concord, Reno NV-CA, Stockton, Modesto, Santa Rosa, and Antioch.

¹⁵ California Constitution Article XIII, Section 13, RTC Section 607.

Senate Bill 825 (Committee on Governance and Finance) Chapter 607
Property Tax Omnibus Bill

Effective January 1, 2014. Among its provisions, amends Sections 75.12, 606, and 3716 of the Revenue and Taxation Code.

BILL SUMMARY

Among its provisions, this annual property tax omnibus measure:

- Clarifies that residential subdivision developers receiving the builders' supplemental assessment exclusion must notify the assessor when a subdivision's home becomes ineligible. §75.12;
- Increases from \$25,000 to \$50,000 the greatest assessed value that the assessor can combine between contiguous parcels in different tax rate areas and under the same ownership. §606; and
- Increases from 10 to 30 days the time within which the tax collector must notify the assessor after it sells tax defaulted property. §3716

Sponsor: California Assessors' Association
California Treasurers and Tax Collectors Association

BUILDERS' EXCLUSION – ASSESSOR NOTIFICATION
Revenue and Taxation Code §75.12

LAW PRIOR TO AMENDMENT

Existing property tax law requires the assessor to reassess property immediately when new construction is completed. A prorated assessment (called the supplemental assessment) is made to increase property value as of the completion date. This supplemental tax bill is made in addition to the regular annual property tax billing. Without a supplemental assessment, an assessment increase is delayed from four to sixteen months when the annual regular tax billing cycle reflects the added value.

A builder who constructs property for resale can file a claim with the assessor to exempt them from a supplemental assessment for the completed construction. This is called the "builders' exclusion." The builder must notify the assessor within 45 days of certain events that make the builder ineligible to continue benefiting from the delayed reassessment the builders' exclusion provides.

While the law generally requires a builder to file a claim for the builders' exclusion, in the case of a builder that constructs homes in residential subdivisions, the assessor can grant the exclusion automatically and the builder need not file a claim for each home in the subdivision.

AMENDMENTS

This bill changes the notification requirement under the builders' exclusion. A residential subdivision builder that receives the exclusion automatically must notify the assessor of any event that makes the builder ineligible to continue benefiting from a delayed reassessment. Notification is required when certain events occur, such as selling the home using an unrecorded contract of sale, using or occupying the home, or renting or leasing the home.

COMMENT

Sponsor and Purpose. The California Assessors' Association (CAA) sponsored this provision to ensure the law explicitly requires subdivision builders to notify the assessor if they remove a home from their resale inventory. When the CAA previously sponsored legislation to streamline administration of the builders' exclusion in residential subdivisions, conforming amendments to the notification procedures were not included. Any owner who receives the builders' exclusion, regardless of whether the owner requested the exclusion or the exclusion was automatically granted, should notify the assessor of changes in eligibility.

CONTIGUOUS PARCELS – THRESHOLD
Revenue and Taxation Code §606

LAW PRIOR TO AMENDMENTS

Under existing law, when any tract of land is situated in two or more revenue districts (tax rate areas), each district must be separately assessed. However, when two or more contiguous parcels comprising the land tract have the same owner, the parcels may be combined into one assessment under two circumstances:

1. If the full value of any parcel is less than \$25,000, that parcel may be combined with the contiguous parcel with the greatest assessed valuation.
2. If the tract of land is being used for a single-family residence and constitutes 45,000 square feet or less, the smallest parcel may be combined with the largest contiguous parcel.

A tax rate area is a specific geographical area within a county wherein each parcel is subject to the same combination of tax agency authority. There are approximately 58,000 tax rate areas in California.

AMENDMENTS

This bill increases the threshold for combining parcels in separate tax rate areas, from \$25,000 to \$50,000.

COMMENT

Sponsor and Purpose. The CAA sponsored this provision to allow assessors to combine more parcels that currently are separately assessed because the land crosses tax rate areas. Typically, property owners will request that the assessor combine contiguous parcels to reduce per parcel special assessments and special taxes.

TAX DEFAULTED SALE NOTIFICATION
Revenue and Taxation Code §3716

LAW PRIOR TO AMENDMENT

Existing law requires the tax collector to notify the assessor within 10 days after a property is sold to collect delinquent taxes. The assessor must reassess property whenever a change in ownership occurs.

AMENDMENT

This provision increases from 10 to 30 the number of days for the sale notification.

COMMENT

Sponsor and Purpose. The California Treasurer and Tax Collectors' Association is sponsoring this provision to provide more time to make the required notification.

TABLE OF SECTIONS AFFECTED

SECTIONS		BILL NUMBER	CHAPTER NUMBER	SUBJECT
Revenue & Taxation Code				
75.12	Amend	SB 825	607	Supplemental assessment: builders' exclusion
402.1	Amend	AB 551	406	Land use restrictions
422.7	Add	AB 551	406	Urban Agriculture Incentive Zones
606	Amend	SB 825	607	Land in multiple revenue districts
3716	Amend	SB 825	607	Report to assessor: tax defaulted sale notification
Government Code				
Chapter 6.3 (§51040)	Add	AB 551	406	Urban Agriculture Incentive Zones