*California State Board of Equalization,*
*Legislative Division*

# LEGISLATIVE BULLETIN

# PROPERTY TAXES LEGISLATION
# 1998

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## Assembly Bill 142 (V. Brown) Chapter 1
### *Tax Rate Area Boundary Changes - Filing Deadline*

*Urgency legislation; effective February 10, 1998. Uncodified Language.*

**This measure grants a two month extension of the filing deadline for school districts in Sonoma County and Humboldt County who had missed the December 1, 1997 filing deadline. Those school districts will have until January 31, 1998, to file the necessary paperwork with the Board.**

***Sponsor: Assembly Member Valerie Brown***

***Law Prior To Amendment:***

Existing law requires taxing districts to file statements and plats identifying boundary changes by December 1 of the year immediately preceding the year in which the boundary changes will be effective.

***Comments:***

1. **Purpose.** The purpose of this measure is to, in part, allow the boundary changes related to Rincon Valley and Santa Rosa Elementary School districts, and the proposed Eureka Unified School District to become effective for 1998-99 fiscal year.

2. **Collection With Annual Tax Bill.** Without the filing deadline extension, these districts will be unable to collect their taxes for the 1998-99 fiscal year with the annual county tax bill.

## Assembly Bill 1246 (Olberg) Chapter 226

*Mining Property; Declines In Value; Separate Appraisal Unit*

*Effective January 1, 1999; Adds Section 53.5 to the Revenue and Taxation Code.*

**This measure classifies heap leach pads, tailings facilities, and settling ponds used for mineral processing on mining properties as a separate appraisal unit for purposes of decline in value assessments.**

*Sponsor: California Association of Mining*

### *Law Prior To Amendment:*

Under existing law, the "base year value" of property is fixed as of the date of change in ownership or completion of new construction and, thereafter, it may increase to reflect inflation by no more than two percent per year. However, Revenue and Taxation Code Section 51 requires that if the fair market value of real property on the lien date falls below its factored base year value for any reason, then its taxable value for that year must be lowered accordingly. For purposes of recognizing declines in value on an annual basis, "real property" is defined to be "that appraisal unit that persons in the market place commonly buy and sell as a unit, or that is normally valued separately." Related to the appraisal unit concept, Property Tax Rule 461(d) provides that fixtures may be assessed as a separate appraisal unit. However, Property Tax Rule 469, which is specific to mining properties, sets forth a different method for measuring value declines with respect to mining properties. This method requires that declines in value on a mineral property be measured in relation to the property as a whole; that is individual components of the property may not be treated as a separate appraisal unit.

### *In General:*

Subdivision (a) of Section 2 of Article XIIIA of the California Constitution provides generally that the assessed value of real property shall be its market value, determined as of the date the property was either newly constructed or last underwent a change in ownership after March 1, 1975. Subsequent paragraphs of subdivision (a) authorize the Legislature to provide an exception to that general requirement, by providing for transfers of base year value from former residences to replacement dwellings, under certain conditions, by qualified persons who are either over age 55 or severely disabled.

### *Background:*

**Mineral Properties: A Unique Taxable Unit**

The Legislature and courts have long recognized that mineral properties are unique. Revenue & Taxation Code Section 104(b) defines "mines, mineral, and quarries in land, and all rights and privileges appertaining thereto" as a distinct type of real property. Section 607.5 defines "mineral rights" and "mining rights" as the right to enter in or upon the land for the exploration, developments, and production of minerals, including hydrocarbons. Lynch v. State Bd. of Equalization, (1985) 164 Cal.App.3d 94, held that the Board acted appropriately in capturing the essential nature of mineral interests (hydrocarbons) in a "taxable unit" under Rule 468 (by application thereafter, under Rule 469). The court stated that while Section 51 recognizes that the market value of an appraisal unit may decrease due to damage or destruction, because of the unique nature of mineral interests, they cannot be treated in a manner identical to other types of property for taxation purposes.

For this reason, the Board included as part of the "appraisal unit," "the right to explore, develop and produce." (Rule 469 (b)(2)) "Development" means the preparation of minerals for production including the removal of waste rock or overburden and the construction of improvements to land related to the production of the minerals. (Rule 469(c)(4)) And "production" means the removal or processing of minerals. (Rule 469(c)(5)) Improvements to land are specifically defined in Rule 469(e)(1)(B)(i) as "road, ditches, trenches, excavations, pits, drifts, stopes, etc." Recognizing that "trenches, excavations, and pits" captured "leachpads," the mining industry objected to such language at the Board's public hearings on Rule 469 in 1990. In its "Final Statement of Reasons" (Rule 469), the Board denied industry's request to delete the reference to these items as improvements (or to treat them as fixtures), on the ground that to do so would improperly limit or remove the use of valuation approaches in arriving at the fair market value of the entire property. DeLuz Homes, Inc. v. County of San Diego (1955) 45 Cal.2d 544. In 1996, during the Board's revision of Assessors' Handbook Section 560, The Assessment of Mineral Properties, the issue of classifying leach pads as fixtures was raised by the mining industry again. Since discussions among the Board staff, representatives of the CAA, and mining industry representatives failed to produce a consensus on the specific language to be included in the handbook on this issue, it was submitted to the Board Members for formal decision. In making its decision, the Board determined that pursuant to existing property tax rules, these items must be classified as land. Consequently, industry's position that these items should be classified as fixtures was not adopted.

**Mineral Properties: Declines In Value**

Property Tax Rule 469 details numerous steps to be followed in assessing mining properties under Proposition 13. To determine the base year value of land and improvements, Rule 469 (e)(1)(B) requires the assessor to determine the following:

> "…the adjusted base year value of land, improvements to land constructed during the exploration, development and production stages (including roads,

> ditches, trenches, excavations, pits, drifts, stopes, etc.), and other improvements in accordance with Section 460.1 of Title 18 of this Code and Sections 51 and 110.1 of the Revenue and Taxation Code."[1]

As to declines in value, Rule 469 (e)(1)(C) provides that:

> "Declines in the value of the mineral property shall be recognized when the market value of the appraisal unit (i.e., land, improvements including fixtures, and reserves), is less than the current market adjusted base-year value of the same unit."

With respect to this measure, the question is whether the words, "…land and improvements (including roads, ditches, trenches, excavations, pits drifts, stopes, etc.),…" above, include heap leach pads, tailings facilities, and settling ponds in the appraisal unit, or whether heap leach pads, etc., may be assessed as a separate appraisal unit under Rule 461(d).

**Mineral Properties: Treated As Single "*Intact*" Appraisal Unit**

The foregoing language plainly states the intention that mining properties are to be valued solely by reference to Rule 469 unless otherwise expressed in the rule. There are no references to Rule 461 or to any other rule, except 460 and 460.1 regarding base-year value, and 463 and 463.5 regarding new construction. This is a strong indication that neither Rule 461, nor any other rule (122.5 Fixtures, 123 Tangible Personal Property) was intended to apply to mining property, including its heap leach pads and disposal sites.

Prior to 1985, Rule 461(d) had a broader scope, in that the relevant language provided: "Excluded from improvements are machinery and equipment which *in all instances* constitute a separate appraisal unit." An amendment by the Board in 1985, deleted the words "in all instances," further indicating that where other rules, such as Rule 469, set forth a different method for measuring value declines with respect to mining properties, Rule 461(d) was not applicable to such properties.

Finally, the "improvements to land" defined in Rule 469 (e)(B)(i) consist of essentially every category of excavation and trenching systems, including the fixtures necessary to make these functional, and must be included as part of the appraisal unit. The express intention of the Board to treat any kind of mining property excavation as "land or land improvements" (per (e)(1)(B)(i)) and to capture for purposes of comparing adjusted base year value with market value (declines) "land, improvements including fixtures, and reserves" in the appraisal unit (per (e)(1)(C)) was based on the fact that, in the case of mining, such property is not "normally valued separately" and is only *part* of the "appraisal unit which persons in the market place commonly buy and sell as a unit." (Section 51((d).)

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[1] The base year value of mineral rights as quantified by proved reserves is calculated separately, under paragraph (e)(1)(A).

*Comments:*

1. **Purpose.** The purpose of this bill is to change the property tax treatment of leach pads, tailings ponds, and settling ponds from appreciating to depreciating assets. The proponents of this measure reason that because the pads and ponds defined in this bill are man-made structures with a limited life and usefulness, they should be treated as depreciating assets for tax purposes, in a manner similar to machinery, equipment, and other processing facilities that have limited life spans. extend the availability of intercounty base year value transfers beyond January 1, 1999.
2. **The sponsor cites inconsistent treatment of settling ponds statewide.** Members of the association, including a company operating in 14 counties, report that many counties already treat settling ponds as a depreciating asset. Thus, in the view of these companies, this measure codifies existing practice.
3. **Opponents of this measure argue that this bill sets a precedent of separately assessing individual components of an appraisal unit.** It is argued that separating the components that make up an appraisal unit complicates the administration of the property tax laws and is contrary to the appraisal unit concept found in Section 51. Further, assessors state that this measure requires a more time-consuming analysis of property values for the purpose of further reducing the assessed value of a property already assessed at a level below its fair market value. The Task Force on Property Tax Administration, a task force that determined the statutory changes needed in light of Proposition 13 and Proposition 8, addressed the issue of declines in value under Proposition 8 in its January 22, 1979, recommendations to the Assembly Committee on Revenue and Taxation. The Task Force gave special attention to declines in value under Proposition 8 in its studies. The following recommendation was embodied in the enactment Revenue and Taxation Code Section 51.

   At page 29, it reads: "The Task Force recommends that the assessed value of real property be the lesser of the Prop. 13 base value compounded annually by 2%, or full cash value. These changes will be measured by that appraisal unit which is commonly bought and sold in the market, or which is normally valued separately. ... The Task Force felt that the purpose of Prop. 13 was to place a <u>cap</u> on the value of property in any one year, while Prop. 8 sought to allow values to rise and fall without restriction at any point <u>below</u> this cap, should <u>actual</u> market values so dictate. The purpose of the appraisal unit is to ensure that these increases or declines in value be measured in the same manner as such property was appraised prior to Proposition 13 [i.e. fair market value]."

   Opponents of this measure point out that it is impossible to sell leach pads and ponds, separate from the property upon which it is installed, thus the property should be considered a single appraisal unit.

4. **This bill would require assessors to estimate the value of these items on an annual basis.** Assessors state that this measure would increase the administrative complexity of assessing mineral properties. This is because assessors would be required to estimate the value of these items separately, even though the value of mineral properties is based on a *total* value estimate that is derived using the income capitalization approach to value which does not result in separate values for land, improvement, and fixtures. Assessors are required by law to allocate total property value between land and improvements. This measure would require that total property value be allocated among three components: land, improvements, and items consisting of leach pads and ponds.

5. **This bill would enact a statute that would prevail over the Board's Property Tax Rule on Mining Properties.** Property Tax Rule 469 (e)(1)(C) is specific in that fixtures are to be included when measuring declines in value on a mineral property as a whole and not treated as a separate appraisal unit. Thus, this measure would require that the Board revise this Property Tax Rule.

## Assembly Bill 1755 (Keeley) Chapter 855
### *Active Solar Energy Systems - New Construction Exclusion*

*Effective January 1, 1999. In part, adds and repeals Section 73 of the Revenue and Taxation Code.*

**Excludes active solar energy systems from the definition of new construction for the 1999-2000 to 2004-05 fiscal years.**

***Sponsor: California Solar Energy Industries Association***

***Law Prior to Amendment:***

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

***Background:***

In 1980, voters approved Proposition 7 (SCA 28, Alquist) giving the Legislature the authority to exclude from property taxation the construction of active solar energy systems. Senate Bill 1306 (Ch. 1245, Stats. 1980; Alquist) added Revenue and Taxation Code Section 73 to implement Proposition 7. This implementing legislation provided that, for fiscal years 1981 through 1985, "newly constructed" did not include the construction or addition of any solar energy systems as defined in Revenue and Taxation Code Section 17052.5(h)(6)(A). This section defined solar energy systems to include passive thermal systems, semipassive thermal systems, active thermal systems, photovoltaic systems, and wind driven systems.

Assembly Bill 375 (Ch. 239, Stats. 1981; Wyman), deleted the reference to Section 17052.5 and instead provided that the exclusion from reassessment as "new construction" applied only to active solar energy systems. Thus, Assembly Bill 375 clarified that the exemption was not applicable to passive solar energy systems or to wind driven systems.

In 1985, Assembly Bill 1412 (Ch. 878, Stats. 1985; Wyman), extended the sunset date of the new construction exclusion to January 1, 1991. In 1989, Senate Bill 1311 (Greene) of the 1989-90 session proposed a repeal of Section 73 on January 1, 1990. Senate Bill 1311 died in the Senate Revenue and Taxation Committee.

Assembly Bill 4090 (Wyman, Alquist) of the 1989-90 session proposed an extension of Section 73 to the 1993-94 fiscal year. Assembly Bill 4090 passed both houses, but was vetoed by the Governor. The Governor's veto messages stated that the bill would have resulted in millions of dollars of property tax revenue loss to local entities in the high desert region of the state.

Senate Bill 103 (Ch. 28, Stats. 1991; Morgan) re-enacted Section 73 (repealed as of January 1, 1991, as a result of a sunset clause), and extended its provision through the 1993-94 fiscal year. In addition, Senate Bill 103 specified that an "active solar energy system" did not include solar swimming pool or hot tub heating systems and specified that in the case of an active solar energy system used to produce electricity, only the portion of the construction or addition that is solar energy property, as defined, was excludable from the definition of "new construction."

1. **Purpose.** The purpose of this measure is to provide a new construction exclusion for persons who will be installing active solar energy systems.
2. **Effective Period and Sunset Date.** This measure would apply to property tax lien dates for the 1999-2000 to 2004-05 fiscal years, inclusive. For purposes of supplemental assessments, its provisions would apply to construction completed on or after January 1, 1999. Thus, proposed Section 73 would apply to qualifying construction completed between January 1, 1999 and June 30, 2005. Proposed Section 73 contains a sunset date that would repeal this section of law on January 1, 2006.
3. **Exclusion Remains In Effect Until A Change In Ownership.** The constitutional authorization to exempt active solar energy systems from taxation has not been statutorily operative since June 30, 1994, the last day of the 1993-94 fiscal year. While any system constructed after June 30, 1994 has been subject to taxation, systems previously excluded while the new construction exclusion was statutorily available, i.e. construction completed between January 1, 1985 and June 30, 1994, have remained exempt from property taxation so long as the property did not change ownership. Generally, new construction exclusions remain in effect until the property changes ownership at which point the property, including the portion of the property (or additional value) previously exempted from taxation via a new construction exclusion, is subject to reassessment at current market value pursuant to the change in ownership provisions of Proposition 13. Consequently, in the event proposed Section 73 is repealed by its sunset date of January 1, 2006, qualifying construction completed between January 1, 1999 and June 30, 2005 would continue to be exempt from taxation for as long as the property does not change ownership.
4. **Spare Parts.** Proposed Section 73 provides a definition of the term "parts" which previous statutory implementing language, i.e. Section 73 as repealed on January 1, 1995, did not contain. Specifically, "parts" are defined to include spare parts whether they are owned by the system owner or the system's maintenance contractor.

5. **Four Year Incentive Program.** The California Energy Commission will be administering a four year program to provide households with incentives to switch to onsite photovoltaic energy systems as a part of the state's Renewable Resource Trust Fund, which was created as a part of the deregulation of California's electricity industry.
6. **Public Utilities Not Affected.** Active solar energy systems owned by public utilities and subject to assessment by the Board of Equalization are not exempt from property taxation; their value would continue to be captured under the unitary approach to value.
7. **Mojave Desert SEGS.** When the new construction exclusion was previously available, the only substantial beneficiary was Luz International Ltd. Luz International Ltd. had constructed nine solar-electrical generating facilities (SEGS) in the Mojave Desert near Barstow in San Bernardino County. Currently, the solar energy systems of these nine facilities are exempt from property taxation and will continue to be exempt until there is a change in ownership. However, portions of the facilities are not eligible for exemption: land, supporting building (i.e., control building, warehouses), fencing, personal property, and fossil fuel fired equipment. There were plans to build 13 facilities in San Bernardino; however, due to financial difficulties, it is uncertain if and when the additional four facilities will be built. The sponsor indicates that, under current economic conditions, it is unlikely that large systems such as the San Bernardino project will be constructed in the near future.

## Assembly Bill 1807 (Takasugi) Chapter 86

*Airline Settlement Agreement - Certificated Aircraft; Tax Credits*

*Urgency legislation; effective June 30, 1998. Adds Sections 401.15 and 5096.3 to the Revenue and Taxation Code.*

**This measures codifies an agreement reached between airlines and counties to settle outstanding litigation and appeals with respect to aircraft assessments. In addition, this bill provides property tax credits to airlines totaling $50 million.**

**Tax Credits.** Provides the following airlines a cumulative $50 million credit on property tax liability to be used over the next five years: Alaska, American, American West, Continental, Delta, FedEx, Northwest, Southwest, TWA, United, UPS, U.S. Airways, and Wings West.

**Certificated Aircraft.** This bill establishes a historical cost basis for valuing certificated aircraft. Specifically, for fiscal years 1998-99 through 2002-03, the value of certificated aircraft shall be presumed to be assessed at full market value if:

1. The aircraft original cost, as defined, is used as the basis for the assessment.
2. The original cost would thereafter be adjusted by the producer price index for aircraft.
3. A 16-year straight-line percent good table will be used to determine percent good.
4. Minimum values for aircraft in service for eight years or more not to exceed prices listed, as specified, in the Airliner Price Guide, a commercially prepared value guide for aircraft.
5. For out-of-production aircraft recommended to be valued by a market approach for 1998 by the Assessors' Association, assessments are the lower of 1) the 1998 lien date value or 2) the average of the used aircraft prices shown in the columns other than the "average new prices" column for used aircraft of the five oldest years for the aircraft model and series in the Airliner Price Guide.
6. With respect to aircraft acquired under a sale/leaseback provision, the historical cost established will be the cost stated in the agreement. However, commencing in 2003-2004 fiscal year, the historical cost established would be increased by an amount equal to one-half of the difference between a taxpayer's book cost and the cost stated in a sale/leaseback agreement.

***Sponsor: Los Angeles County***

***Law Prior to Amendment:***

Current law is silent with respect to how aircraft is valued for property tax purposes. There is an Aircraft Advisory Subcommittee of the California Assessors' Association Standards Committee that meets annually to determine and recommend values for certificated aircraft. These values are recommended by the subcommittee for statewide uniformity, but assessors in individual counties are not required by law to use the suggested values.

***In General:***

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

***Background:***

With respect to the assessment of property directly owned by airlines, including aircraft, airlines have filed lawsuits that seek overall tax relief. These lawsuits are pending.

This measure makes detailed Legislative findings and declarations as well as provides a statement of legislative intent that reads as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Two of the most difficult and contentious property tax assessment issues in recent years have concerned the assessment of certificated aircraft and airline possessory interests, other than interests stated in a written agreement for terminal, cargo, hangar, automobile parking lots, storage and maintenance facilities and other buildings and the land thereunder leased in whole or in part by an airline.

(2) These issues have given rise to litigation and appeals challenging assessments involving hundreds of millions of dollars of property tax revenues.

(3) The uncertainty created by pending litigation and appeals over the assessment of airline property and possessory interests in publicly owned airports is disruptive to both airline industry tax planning and local government and school finance.

(b) It is the intent of the Legislature in enacting this act to facilitate resolution of the disputes over the assessment of certificated aircraft by codifying recommendations produced by a county and airline industry working group, that do all of the following:

(1) Establish valuation methodology for certificated aircraft.

(2) Clearly establish a presumption of correctness if county assessors follow the assessment methodology set out in this measure and in Assembly Bill 2318.

(3) Dispose of certain outstanding litigation and appeals over aircraft valuation.

(4) Mitigate the financial impact of this statutory change on local governments and schools by establishing a method by which the issuance of any prior year refunds to litigating airlines would be treated as credits against future tax payments.

SECTION 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

This measure is necessary to provide guidance and clarification that is essential to the fair and efficient taxation of airline industry property and possessory interests in publicly owned airports in the current year, and to clarify the status of prior-year property tax payments that have funded essential services provided by local governments and schools.

***Comments:***

1. **Purpose.** The purpose of this measure is to codify the results of a working group of counties and airline industry representatives that have been meeting for nearly a year in an effort to resolve issues related to the property taxation of property owned and used by airlines. The resolution of these matters will dispose of all outstanding litigation and appeals over assessments on the real property rights of airlines in airports as well as the valuation of certificated aircraft.

2. **Double-Joined With AB 2318.** This bill is one part of a three-piece package that includes legislation by Assembly Member Knox (AB 2318) and Senator Kopp (SB 30). This measure is double joined with AB 2318. Consequently, both bills must pass in order for either measure to become effective. Whereas this bill addresses the assessment of an airlines personal property, AB 2318 addresses the assessment of an airlines real property interest in airports.

3. **Airlines Receive $50 Million In Property Tax Credit.** This bill provides the monetary portion of the settlement agreement, $50 million, which relates to both the personal and real property issues. The $50 million will be redeemed by airlines as credits on future tax liability in equal installments over the next five years.

4. **Minimum Aircraft Values Reduced.** The settlement agreement reduces the minimum aircraft values that had been used by assessors previously.

5. **Sale-Leaseback Transactions.** The settlement agreement clarifies the value of aircraft that is subject to a sale-leaseback transaction.

6. **Statewide Conformity.** This bill would statutorily establish a historical cost basis for valuing certificated aircraft. This measure would, by creating valuation standards, ensure airlines that their aircraft assessments will be calculated uniformly in every county where they operate, provided the assessor opts to choose the methodology that has the presumption of correctness.

7. **Codifying Settlement Agreements Precedent Set With Intercounty Pipelines.** To avoid protracted litigation over assessments of intercounty pipelines after the courts ruled that those assessments were the proper jurisdiction of local assessors rather than the Board, pipeline owners and counties negotiated a settlement agreement which resulted in legislation. Stats. 1996, Chap. 76, (AB 1286, Takasugi), established statutory guidelines for valuing these intercounty pipeline rights which also have a presumption of correctness when followed by the assessor.

## Assembly Bill 2318 (Knox) Chapter 85
*Airline Settlement Agreement - Possessory Interests*

*Urgency legislation; effective June 30, 1998. Adds Section 107.9 to the Revenue and Taxation Code.*

**This measure codifies an agreement reached between airlines and counties to settle outstanding litigation and appeals with respect to the assessment of taxable real property rights of airlines in publicly owned airports.**

**Airlines - Possessory Interests.** This measure creates a presumption of correctness if an assessor follows a direct income approach in capitalizing net economic rent, as specified, to determine the value of all the taxable real property rights of an operator of certificated aircraft at a publicly owned airport. This assessment would capture the operator's interest in the airport in its entirety, with the exception of an operator's interest in certain site-specific facilities deemed "excluded possessory interests" such as terminal, cargo, hangar, automobile parking lot, storage and maintenance facilities and other buildings and the land thereon. These interests would be assessed separately. Thus, with the exception of site-specific assessments, all other assessments for taxable real property rights in publicly owned tax exempt airports would be superseded by the establishment of this single general purpose assessment.

- *Economic Rent:* 1/2 of the landing fee rate used to calculate the 96-97 assessment multiplied by the aggregate weight of landings by the operator. The rent shall thereafter be annually adjusted by the CCPI. Economic rent is to be adjusted in proportion to the increase or decrease of landing weights.
- *Expense Ratio:* The ratio used for the 1996 lien date.
- *Capitalization Rate:* The rate used for the 1996 lien date, annually adjusted in proportion to the changes in the "Going-in Cap Rate; All Types" as published by the Real Estate Research Corporation, rounded to the nearest 1/2 percent.
- *Term of Possession:* The term used to calculate the 1996-97, but not to exceed 20 years.

***Sponsor: Los Angeles County***

***Law Prior to Amendment:***

The use of nontaxable publicly owned real property by a private party can result in that private party being assessed a "possessory interest" in the real property which requires that the private party pay property taxes on the use of that property.

***In General:***

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

***Background:***

Recent activity related to property tax assessment issues related to airlines is summarized below:

**Litigation.** With respect to possessory interests, an appellate court has held, in a 1991 split decision, that commercial airlines' use of airport runways constitutes a valuable, taxable, use of public property. United Airlines v. County of San Diego 1 Cal. App. 4th 418. With respect to the assessment of property directly owned by airlines, including aircraft, airlines have filed lawsuits that seek overall tax relief. These lawsuits are pending.

**Legislation.** In 1995, Senate Bill 657 (Stats. 1995, Chap. 498, Maddy) revised the general provisions that define possessory interests. Pursuant to the passage of SB 657, three measures have been before the Legislature that specifically relate to possessory interests and airlines: SB 32 (1997, Maddy); SB 494 (1996, Maddy); and SB 1903 (1996, Maddy). These measures would have codified various presumptions, both rebuttable and conclusive, explicitly stating whether the use of a public transportation corridor results in a possessory interest.

**Regulations.** The Board recently revised Property Tax Rule 20, effective April 6, 1998, the general property tax rule on possessory interests. With respect to possessory interests in airport runways or taxiways, Rule 20 reads:

> (c)(5) "Independent" means a possession, or a right or claim to possession, if the possession or operation of the real property is sufficiently autonomous to constitute more than a mere agency. To 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. For example, the control of an airport runway or taxiway by the Federal Aviation Administration (FAA) or another government agency or its agent is so complete that it precludes the airlines from exercising sufficient authority and control over the management or operation of the runways or taxiway and does not constitute sufficient "independence" to support a possessory interest.

***Comments:***

1. **Purpose.** The purpose of this measure is to codify the results of a working group of counties and airline industry representatives that have been meeting for nearly a year in an effort to resolve issues related to the property taxation of property owned and used by airlines. The resolution of these matters will dispose of all outstanding litigation and appeals over assessments on the real property rights of airlines in airports.

2. **Double-Joined With AB 1807.** This bill is one part of a three-piece package that includes legislation by Assembly Member Takasugi (AB 1807) and Senator Kopp (SB 30). This measure is double joined with AB 1807. Consequently, both bills must pass in order for either measure to become effective. Whereas this bill addresses the assessment of an airline's real property interest in airports, AB 1807 addresses the assessment of an airline's personal property and specifies the monetary portion of the settlement agreement, which is $50 million. The monetary settlement relates to both personal and real property issues and will be redeemed by airlines as credits on future tax liability.

3. **Creates An Airline "Unitary" Assessment In Airports.** The value derived from using the proposed methodology is intended to capture the assessment of the airlines real property rights in the airport in its entirety as a functioning unit. "Site-specific facilities" which presumably means areas of the airport specifically designated for a particular airline, statutory examples of which are terminals, hangers and cargo areas, would be the only items subject to a separate, additional assessment. Thus, with the exception of "site-specific facilities," all other assessments for rights in publicly owned tax exempt airports would be eliminated by the establishment of this single general purpose assessment.

4. **Economic Rent Cut In Half.** The settlement agreement reduces by fifty percent the amount of economic rent that had been previously used by most counties in the income approach to value. It also places limits on future increases in each of the variables used in the income approach.

5. **Creates A Concurrently Running "1996 Base Line" Full Cash Value Assessment.** The settlement agreement essentially creates a "base line" assessment keyed to 1996 data. Its attributes are similar to the limitations placed on increases to base year values under Proposition 13 and would run parallel to that value determined to that system. The assessments would be recalculated annually as Section 110 "full cash value" assessments which would override the factored base year value of the airlines interests under Section 110.1. If the Proposition 13 factored base year under Section 110.1 was ever less than the annual assessment under Section 110, for any year, the assessment would revert to the factored base year value.

6. **Presumption of Correctness.** This measure does not require that an assessor use the proposed assessment methodology. Rather it provides a presumption of correctness with respect to values determined in accordance with the

methodology. Thus, an assessor would not be bound to valuing all taxable real property rights of the operator's at publicly owned airports using these statutorily established valuation procedures.

7. **Statewide Conformity And Predictable Tax Planning.** This measure would, by creating valuation standards, ensure airlines that their assessment will be calculated uniformly in every county where they operate, provided the assessor opts to choose the methodology that has the presumption of correctness. Further, since the variables to be used in the income approach would be statutorily prescribed, airline industry tax planning would be more predictable.

8. **Codifying Settlement Agreements Precedent Set With Intercounty Pipelines**. To avoid protracted litigation over assessments of intercounty pipelines after the courts ruled that those assessments were the proper jurisdiction of local assessors rather than the Board, pipeline owners and counties negotiated a settlement agreement which resulted in legislation. Stats. 1996, Chap. 76, (AB 1286, Takasugi), established statutory guidelines for valuing intercounty pipeline rights which also have a presumption of correctness when followed by the assessor. This measure would be similar to these existing measures which have worked well for both taxpayers and assessing officials.

## Assembly Bill 2384 (Aguiar) Chapter 139

*Manufactured Home Parks*

*Change In Ownership Exclusion; Tenant Participation Level*

*Effective January 1, 1999; Amends Section 62.1 to the Revenue and Taxation Code.*

**This measure 1) extends indefinitely the change in ownership exclusion for tenant purchases of manufactured home parks which had been scheduled to sunset January 1, 2000 and 2) provides that if, on or after January 1, 1998, a park is acquired by an entity that did not attain an initial tenant participation level of at least 51% on the date of the transfer, the entity shall have up to one year after the date of the transfer to attain a tenant participation level of at least 51%. If an individual tenant notifies the county assessor of the intention to comply with the conditions set forth in the preceding sentence, the mobilehome park may not be reappraised by the assessor during that period. If, however, a tenant participation level of at least 51% is not attained within the one-year period, the county assessor shall thereafter levy escape assessments for the mobilehome park transfer.**

*Sponsor: Golden State Mobilehome Owners League*

### *Law Prior To Amendment:*

Until January 1, 2000, certain transfers of mobilehome parks are excluded from change in ownership if it is purchased by the tenants who rent the individual spaces of the mobilehome park. 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.

### *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 Tenant Owned Entity- §62.1(a):** (operative until January 1, 2000) 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(c), if the park has been excluded from a change in ownership under the window provisions 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 for 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 Tenants - §62.1(b):** (operative until January 1, 2000) 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 thirty six months after the first purchase of a rental space by a tenant, a resident organization, defined in Health & Safety Code §50781. If the tenant(s) notify the assessor of their intent to comply with these conditions between January 1, 1985 and January 1, 2000, 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, and before January 1, 2000.

**Exclusion for Interim Holding By Non-Tenant Owned Entity - §62.2:** (operative until January 1, 2000) 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. For parks originally transferred on or after January 1, 1993, the interim time period is extended to 36 months, and for parks located within a disaster areas, the time period is extended to 76 months. The intent, stated by the Legislature in Section 62.1(e), is that the exclusion is for transfers to these entities which "facilitate affordable conversion of mobilehome parks to tenant ownership." Otherwise the transfer is disqualified from the change in ownership exclusion of Section 62.1.

***Background:***

In 1984, Section 62.1 was added to the Revenue and Taxation Code with a sunset date of January 1, 1989 by Stats. 1984, Ch. 1692 (AB 2240, Seymour). In 1987, the sunset date was extended to January 1, 1994 by Stats. 1987, Ch. 1344 (SB 298, Craven). In the 1992 legislative session, SB 1312 (Craven) proposed an extension of the sunset date to January 1, 2000; however this bill was held in abeyance by the Senate Revenue and Taxation Committee amid concerns of property tax revenue loss to local government and questions as to the constitutionality of the exclusion. As a result a Legislative Counsel opinion was requested. Legislative Counsel's Opinion #6691, issued May 18, 1992, opined that the exclusion from change in ownership of mobilehome parks converted to resident-ownership from change in ownership was not a valid interpretation of that term as it is used in Article XIII A of the California Constitution, and was not authorized by any constitutional provision allowing mobilehome parks preferential treatment in avoiding reappraisal. Notwithstanding the opinion, in 1993, the sunset date was extended to January 1, 2000 by Stats. 1993, Ch. 1200 (SB 664, Craven; see also SB 351, Craven).

***Comments:***

1. **Purpose.** The purpose of this measure is to extend indefinitely the ability of residents of the mobilehome parks to maintain the same level of property taxation, as the prior owner rather than triggering a reassessment of the mobilehome park to current market value. Generally tenants organize to purchase the park in an effort to curb the increasing rents charged by the previous mobilehome park owner. Without the change in ownership exclusion, the property tax increase of the underlying park could be significant expense to the tenants many of whom are on a fixed or low income.

2. **Legislative Counsel Opinion**. Legislative Counsel's Opinion #6691, issued May 18, 1992, opined that the exclusion of mobilehome parks converted to resident-ownership from change in ownership is not a valid interpretation of that term as it is used in Article XIII A of the California Constitution. Consequently, it could be argued that this bill has the effect of excluding real property from reappraisal without specific constitutional authorization. However, notwithstanding the Legislative Counsel opinion and the absence of constitutional authority, the Legislature has approved the change in ownership exclusion for resident conversions for the last fourteen years, in order to encourage "affordable conversions of mobilehome parks." (Section 62.1(e) This measure would eliminate any window periods on the exclusion and extend the pre-existing provisions indefinitely. It could be reasoned that this exclusion embodies the essence of the proportional interest exclusion in Section 62(a)(2). Although technically there has been a transfer of the legal ownership of the underlying land upon which the mobilehome sits, there has been no change in occupancy or use of the property by its long term residents. Thus, such transfers could be excluded as merely a change in the method of holding title to the park property, while the beneficial ownership or use of the property to the owner-tenants remains the same.

## Assembly Constitutional Amendment 22 (Pringle) Resolution Chapter 60

***Environmental Contamination***
***Base Year Value Transfer***
***New Construction Exclusion***

*Constitutional Amendment Before Voters November 3, 1998. Amends Section 2 of Article XIII A of the California Constitution to the Revenue and Taxation Code.*

**This measure places a constitutional amendment before the voters to allow the owners of qualified contaminated property to transfer the property's base year value to a replacement property acquired or constructed on or after January 1, 1995, or to property repairs performed on or after that date.**

Where property is uninhabitable, in the case of residential property, or unusable, in the case of nonresidential property, due to environmental problems, this constitutional amendment would allow the transfer of the property's base year value to replacement property, of equal or lesser value, in the same county or in another county, if the receiving county has adopted a resolution authorizing such intercounty transfers. Alternatively, if structures located on the property are demolished and rebuilt, then the reconstruction would be excluded from the definition of "new construction," provided it is similar in size, utility, and function to the original structures.

This constitutional amendment would permit property owners of residential or nonresidential property to retain their original base year values if all of the following conditions exist:

1. The residential property is rendered uninhabitable and the nonresidential property is rendered unusable, as defined, due to environmental problems.
2. The property is located on a site that a state or federal government agency has designated as a toxic or environmental hazard or as an environmental cleanup site.
3. The property has structures upon it which must be either substantially damaged or destroyed as a result of the environmental cleanup activities.
4. The lead state or federal agency has stipulated that the owner of the property did not cause or acquiesce in any act that caused or could have prevented the environmental problems.
5. The replacement property is acquired or newly constructed within 5 years after the contaminated property is sold or otherwise transferred.
6. The owner did not know the property was contaminated at the time the property was acquired or constructed.

***Sponsor: Assembly Member Pringle***

***Law Prior To Amendment:***

Real property is reassessed to current market value levels whenever there is a change in ownership or new construction unless excludable pursuant to a Constitutional provision. Previously, no special assessment provisions had existed for property acquired, constructed, or reconstructed as a replacement for contaminated property.

***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 new construction occurs. When a reassessable event occurs, the value of the property for tax purposes is redetermined based on its current market value. Because real estate values generally appreciate over time, the value determined may be substantially higher than its previous assessed 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 indexed value is referred to as the "factored base year value."

California property tax law provides for various situations where the base year value of a property is either: 1) retained, notwithstanding that new construction had taken place or that the property had transferred ownership, or 2) transferred to another property, notwithstanding that the property had transferred ownership. Briefly, Revenue and Taxation Code Section 70(c) provides that where property has been damaged or destroyed by a misfortune or calamity, the property will retain its previous assessed value after it is reconstructed. Section 63.1 provides that when property is transferred between parents and children, the property will not be reassessed to current market value, instead the property may retain its base year value. Section 69 and Section 69.3 provide that when property is damaged in a Governor-declared disaster, property owners may transfer their base year value to another property. Finally, Section 69.5 permits persons over the age of 55 years or disabled persons to, once in their lifetime, transfer their base year value from one home to another. All of these provisions are provided for in the Constitution.

***Background:***

A vintage housing development in Orange County was discovered in 1989 to have been built on soil contaminated in the 1930s from dumping fuel into a trench. Five of the structures had to be demolished to effect soil remediation. As a result, these property owners must either rebuild or relocate.

*Comments:*

1. **Purpose.** The purpose of this measure is to permit those persons in Orange County, as well as all similarly affected property owners, to maintain their Proposition 13 base year values.
2. **Without this measure, affected property owners will forfeit their base year value through no fault of their own.** Proponents of this measure reason that the tax laws should not further burden affected property owners by imposing upon them higher property taxes. This constitutional amendment would permit property owners to maintain their current level of taxation whether they rebuild on site or purchase or construct a replacement property within the same county. By avoiding reassessment to current market value, property owners could preserve their Proposition 13 base year value.
3. **Implementation Issues.** If this measure is approved by voters, then there are various implementation issues that would need to be addressed. This could be accomplished in a companion measure that provides the implementing statutory language that defines the terms and prescribes the conditions under which the base year value transfer may be granted. One issue to consider is how to handle base year value transfers if the property owner purchases or constructs a replacement property that either exceeds the "equal or lesser" standard, in the case of acquiring a new property, or exceeds the "comparable" standard, in the case of rebuilding on the existing site. Would the owner be precluded from receiving a base year value transfer or would the owner receive the base year value on the comparable portion and receive assessment at the fair market value on the excess?
4. **Related Soil Remediation Issues.** This measure excludes from new construction on-site structure reconstruction. Related to this issue is the soil remediation which causes the structure to be destroyed. Neither the Constitution nor the statutes currently provide specific guidance with respect to whether soil remediation is or is not "new construction." This is an unsettled issue in property tax law. Although not free from controversy, this constitutional amendment could additionally be used as an opportunity to constitutionally provide whether soil remediation is or is not new construction.
5. **Is the Revenue Loss Really a "Loss"?** Proponents of this measure reason that viewing this bill as creating a revenue loss is a mischaracterization. This is because a revenue loss only occurs in the context of the contamination. If the contamination had not occurred, then those individuals would not have been compelled to relocate. It is the involuntary relocation that results in increased revenues to government as property values are reassessed to current market level. Thus, the revenue "gain" as a result of this measure is solely a byproduct of the contamination. Therefore, one could view this measure from a perspective where the only loss is the loss to the affected property owners who forfeit their

lower base year values. From this viewpoint, there is no loss to government -- it continues to receive the same amount of tax revenue from each displaced property owner.

6. **Amendments.** The February 10, 1998, amendment 1) provides that the value of the contaminated property, for purposes of the value test, should be its value as if it were not contaminated; 2) sets an upper time limit on receiving a base year value transfer at five years after the property is sold or otherwise transferred; 3) specifies that a transfer is available only if the property owner bought the property unaware of the contamination; and 4) keys the effective date of its provisions to the date replacement property is acquired or constructed rather than when the property is contaminated. The January 15, 1998 amendment clarified that the base year value transfer provisions of this measure are not limited to residential property. The September 2, 1997 amendment added a rebuttable presumption that an owner is responsible for the property contamination if that owner is "related to any person or entity" that caused the contamination, as defined. The July 8, 1997 amendment ensured that property owners could not receive double the benefits of this provision by receiving both a base year value transfer and a new construction exclusion. The June 24, 1997 amendment precluded vacant land from receiving a base year value transfer.

## Senate Bill 30 (Kopp) Chapter 87
*Property Tax Refunds; Credits On Future Liabilities*

*Effective January 1, 1999. Adds Section 5103 to the Revenue and Taxation Code.*

**Provides general authority for a taxpayer and a county to enter into a written agreement that would treat refunds of tax including interest due to a taxpayer as a credit against the taxpayer's future property tax liabilities. The granting of a credit, rather than a direct refund, would be voluntary on the part of both parties. The government agency that would have the authority to authorize tax credits would be the agency that has the authority to settle legal disputes on behalf of the county.**

*Sponsor: Senator Kopp*

*Law Prior to Amendment:*

Current law does not provide authority for counties to issue tax credits rather than property tax refunds.

*Background:*

This bill is one part of a three-piece package that includes legislation by Assembly Member Knox (AB 2318) and Assembly Member Takasugi (AB 1807). Los Angeles County is the lead sponsor of these measures. AB 1807 would provide specific authority to issue tax credits rather than a property tax refund in the pending airline settlement agreement by enacting Revenue and Taxation Code Section 5096.3. In that agreement, airlines would receive a $50 million credit on property tax liability to be used over the next five years.

*Comments:*

1. **Purpose.** This bill provides authority for any future settlement agreements thereby preclude the need to introduce special purpose legislation to authorize other similar agreements. The intent of this measure is to create a tool that could be used to mitigate the financial impact on local government and schools (and the state, indirectly via the school property tax backfill) of large property tax refunds. For taxpayers, this measure may make it more likely that government would settle disputes with taxpayers in negotiation proceedings, rather than pursuing litigation, if the budgetary consequences of large property tax refunds were less drastic.

## Senate Bill 218 (Knight) Chapter 562
### *Flight Test Schools; College Exemption*

*Tax levy; effective September 18, 1998. Amends Section 203 of the Revenue and Taxation Code.*

**Extends the college exemption to colleges that offer a degree, obtainable in one year, in flight test technology or flight test science for which a master's degree program has been approved by the California Council for Private Postsecondary and Vocational Education.**

*Sponsor: Senator Knight*

*Law Prior to Amendment:*

Article XIII, Section 3(e) of the California Constitution provides that property used exclusively for educational purposes by a nonprofit institution of higher education is exempt from property taxation.

Section 203(b) of the Revenue and Taxation Code defines an institution of higher learning to be "an institution incorporated as a college or seminary of learning, which requires for regular admission the completion of a four-year high school course or its equivalent, and confers upon its graduates at least one academic or professional degree, based on a course of at least two years in liberal arts and sciences, or on a course of at least three years in professional studies, such as law, theology, education, medicine, dentistry, engineering, veterinary medicine, pharmacy, architecture, fine arts, commerce, or journalism."

*Background:*

The National Test Pilot School is currently subject to property taxation because it is not eligible for the college exemption under the requirements set forth in the Revenue and Taxation Code Section 203 and it is not eligible for the welfare exemption under Section 214.

According to a newspaper article entitled "Test pilot school flies with foreigners" published in the Antelope Valley Press on July 30, 1996, the school is used primarily by pilots from other nations ("most U.S. fighter pilots are trained at Air Force or Naval academies"). The article states that most of the advertisement for the school, which costs $400,000 to attend for a full professional course, is done "overseas in Indonesia, Malaysia, and Korea". The school also has a five year contract with the

Federal Aviation Administration to train its investigators in airplane certification in a six-week program. In addition, the school offers a course for airplane kit builders.

The Internal Revenue Service has determined that the National Test Pilot School is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code. The Council for Private Postsecondary and Vocational Education has approved the National Test Pilot School's "Master in Flight Test Technology" and "Master of Science in Flight Test and Evaluation" programs.

***Comments:***

1. **Purpose.** According to the author's office the purpose of this measure is to exempt the National Test Pilot School from property taxes in order to give them an equal property tax exempt status with other flight testing schools which are exempt from property taxation because they are owned by the U.S. Military. The author's office also states that the National Test Pilot School is the only nongovernmental test pilot school located in California.

2. **Length of Program is a Statutory Requirement.** The California Constitution does not specify any requirements for the college exemption other than it be granted to a "nonprofit institution of higher education." The requirement that the college confer a degree based on a course of at least two years is a statutory requirement. The National Test Pilot School has been deemed to be a nonprofit institution by the Internal Revenue Service and the Council for Private Postsecondary and Vocational Education has approved the school's "Master in Flight Test Technology" and "Master of Science in Flight Test and Evaluation" programs.

3. **Precedent For Other Less Than Two Year Programs.** This bill would set a precedent for extending the college exemption to nonprofit institutions of higher education that offer less than two year programs. If this measure is successful, it may stimulate requests for the expansion of the college exemption for other similarly situated institutions. It could be argued that all nonprofit institutions of higher learning should be extended the college exemption regardless of the length of its programs, rather than extending the college exemption on a piecemeal basis.

**Senate Bill 1103 (Alpert) Chapter 583**
***Property Tax Omnibus Measure***

*Effective January 1, 1998. Amends Sections 64, 465, 834, 995.2, and 5802 of the Revenue and Taxation Code.*

1. **Reduce from seven years to six the time that must elapse before an assessor or the Board may destroy documents containing information obtained from taxpayers. §465, §834**
2. **Permit the Board to destroy documents after three years if the documents have been microfilmed, in conformance with the authority already granted to assessors. §834**
3. **Permit alternative storage of such documents using advanced technologies. Add microfiche and computer imaging storage options for both assessors and the Board. §465, §834**
4. **Correct cross reference errors. §64, §995.2, §5802**

***Sponsor: Various persons, see detail.***

## Document Retention & Storage Alternatives

**This measure:**

1. **Reduces from seven years to six the time that must elapse before an assessor or the Board may destroy documents containing information obtained from taxpayers.**
2. **Permits the Board to destroy documents after three years if the documents have been microfilmed, in conformance with the authority already granted to assessors.**
3. **Adds microfiche and computer imaging storage options for both assessors and the Board.**

*Law Prior To Amendment:*

Section 465 of the Revenue and Taxation Code relates to the destruction of records containing information received by county assessors from local assessees. This section allows for the destruction of documents when seven years have elapsed since the lien date for the taxes for which such information was obtained. However, the documents may be destroyed when three years have elapsed since the lien date if the documents have been microfilmed.

Section 834 of the Revenue and Taxation Code relates to the destruction of records containing information received by the Board from state assessees. Section 834 allows for the destruction of documents when seven years have elapsed since the lien date for the taxes for which such information was obtained. The Board is not granted the authority to use alternative storage methods, such as microfilm.

*Comments:*

1. **Sponsor and Purpose**. This provisions is sponsored by the Board of Equalization and County Assessors. Its purpose is to permit the storage of assessee furnished documents on a media other than the original paper media. This provides more ready access to the document, using current technologies, while decreasing storage area needs. The purpose of reducing the records retention period from 7 to 6 years is to provide greater consistency between the current limitations period for making assessments.
2. **Previously contained in SB 2237.** These provisions were previously contained in SB 2237(SRT). They were amended into this bill on May 19, 1998 and amended out of SB 2237 on July 21, 1998.

## Cross Reference Errors

### Revenue and Taxation Code §64

Senate Bill 44 (Chapter 388, Statutes of 1996) redesignated the subdivisions of Section 61 of the Revenue and Taxation Code. The former subdivision (h) is now subdivision (i). However, conforming changes were not made to the reference to this section in Section 64. This proposal would correct the reference in Section 64 to reflect the relettered subdivision of Section 61.

### Revenue and Taxation Code §995.2

Chapter 1281 of the Statutes of 1983, repealed Section 995.1 on September 30, 1983. However, a cross reference to Section 995.1 is still found in Section 995.2. This proposal would delete the cross reference to the repealed code section.

### Revenue and Taxation Code §5802

Senate Bill 1431 (Chapter 1222, Statutes of 1994) added subdivision (c) to Section 5802 of the Revenue and Taxation Code to define the "base year value" of a manufactured home converted from vehicle license fee status to the local property tax roll. However, subdivision (a) of Section 5802, which generally defines "base year value" for purposes of the Manufactured Home Property Tax Law, was not amended to account for the 1994 addition of subdivision (c). This proposal would add the reference to subdivision (c) in Section 5802.

**Senate Bill 1182 (Costa) Chapter 353**
***Farmland Security Zones***

*Urgency legislation; effective August 24, 1998. Amends Sections 16140, 16141, 16142, and 16146 of, adds Sections 56375.4 and 56375.45 to, and adds Article 7 (commencing with Section 51296) to Chapter 7 of Part 7 of Division 1 of Title 5 of, the Government Code, amends Section 426, and adds Section 423.4 to, the Revenue and Taxation Code.*

**Allows landowners to petition county boards of supervisors to create Farmland Security Zones which enable landowners who have Williamson Act contracts to rescind their traditional 10-year rolling contract to enter into 20-year rolling contracts. In exchange, property will be assessed at 65% of the value under Section 423 or 65 percent of the value under Section 110.1, whichever is lower. Specifically, this bill provides that:**

1. Landowners with Williamson Act contracts will be empowered to petition the board of supervisors to rescind their traditional 10-year rolling contracts and simultaneously enter into a 20-year rolling contract which designates the property a farmland security zone. In order to qualify for a farmland security zone contract, the land must be predominantly prime farmland as defined in Section 51201(c) of the Government Code or be included in the Important Farmland Series Maps.
2. Land in a Farmland Security Zone shall be valued for assessment purposes at 65% of the value under Section 423 or 65% of the value under Section 110.1, whichever is lower.
3. Any land and living improvements included in a contract, as specified under the provisions of this bill, shall be exempt from any benefit assessment that does not directly benefit the land. Any per parcel special tax shall be levied at a reduced rate, if the tax is levied after the effective date of this article.
4. Prohibits local agency formation commissions from any annexation of land under a farmland security zone contract that would result in the annexation of such land to a city, include such land in a special district that provides sewers, non-agricultural water, or streets and roads that do not directly benefit land uses under the contract or if the landowner does not consent to the annexation.
5. Prohibits farmland security zones from being established within a city's sphere of influence, unless the city has approved such an action by resolution.
6. Prohibits school districts from annexing any land in a farmland security zone.

***Sponsor: California Farm Bureau Federation***

**Senate Bill 1997 (Johnson) Chapter 783**
*Improvement Bonds*

*Urgency legislation; effective September 23, 1998. Amends Section 110 of the Revenue and Taxation Code.*

**This bill creates a rebuttable presumption that the value of improvements funded through improvement bonds is reflected in the sales price of property.**

***Sponsor: Senator Johnson***

***Law Prior to Amendment:***

Previous law has been silent with respect to establishing the value of property when it is encumbered by an improvement bond. In practice, all or a part of the outstanding improvement bond balance may be added to the sales price of a property in determining an indicator of value for property tax purposes upon a purchase. A sale price adjustment to reflect bonds is used when the sales price paid for the property does not reflect its fair market value in relation to comparable property not subject to improvement bonds.

***Background:***

To finance the construction or acquisition of infrastructure in real estate development projects, real estate developers may initiate the creation of special assessment districts that sell improvement bonds to investors to fund land development.

The use of improvement bonds to finance land development is more prevalent in Southern California than Northern California and are more often used in larger scale developments. It is not uncommon for a new home in a large scale development in Southern California to have improvement bonds in the range of $30,000 to $50,000.

Recently, there have been newspaper articles concerning the practice of adding improvement bond amounts to the sales price of new homes in establishing the assessed value of the property in Irvine.

Senate Bill 928 (Wright, 1993) would have provided that fair market value of a property does not include any amount over the sales price with respect to any improvements made by governmental agencies. This measure failed.

***Comments:***

1. **Purpose.** According to the author's office, its purpose is to address the issue of adding outstanding improvement bond balances to the nominal sales price of homes as has been recently addressed in various newspaper articles.

2. **What is an improvement bond?** Essentially, an improvement bond is a publicly financed loan used to pay for the conversion of raw land into ready-to-build parcels. Local governments assist private parties in financing the development of land by forming special assessment districts. These districts sell tax exempt bonds (i.e. improvement bonds) to investors. The proceeds of the bonds pay for onsite development improvements, such as streets and utility services, that generally enhance land value. The buyer assumes the outstanding improvement bond balance associated with that parcel upon its purchase.

3. **Lower sales price.** The portion of development costs funded by improvement bonds are not factored into the price of the property since the developer did not incur this cost. Consequently, the use of improvement bonds permits property to be sold for a lower price since the "sales price" does not include all the costs of development. The advantage to the buyer is that 1) a lower price makes it is easier to qualify for a mortgage and 2) the financing cost of the improvements funded through a bond is less over the long run since the interest rate paid on the bond is lower than conventional financing.

4. **The problem: Automatic addition of improvement bond balances.** Proponents state that in some counties, the current assessment practice is to automatically increase the sales price by the amount of the outstanding bond balance without additional market analysis.

5. **How would this bill work?** This measure would require that the assessor first analyze market data prior to adjusting a sales price for improvement bonds. The analysis would be based on a comparison of sales prices for competing properties from areas developed without the use of improvement bonds.

6. **Why would a bond be added to the sales price for assessment purposes?** A sale price adjustment to reflect bonds would be used when the sales price paid for the property does not reflect its fair market value in relation to comparable property not subject to improvement bonds. To illustrate, two residential developments compete side by side, one developed with improvement bond financing, the other through conventional construction loans from a bank. In the first development, a 2000 square foot home sells for $250,000 and the buyer assumes a $30,000 debt to pay an improvement bond. In the second development, an identical home sells for $280,000. If all other factors are equal,

then the $30,000 difference in sales price would be attributable to the improvement bond debt. In the first development, a buyer has two loans to two payees plus any down payment totaling $280,000. In the second development, the buyer has one loan to one payee plus any down payment totaling $280,000. The theory is that for property tax purposes the fair market value of each home is $280,000 and both taxpayers should pay the same amount in taxes for equivalent homes where the only difference is the financing structure.

7. **When would it be inappropriate to adjust a sales price?** It would, for instance, be inappropriate to make an adjustment if comparable properties unencumbered by bonds sell for the same price or less. In the above example, if both homes sold for $250,000, even though one home required the buyer to assume a $30,000 improvement bond, then an adjustment would not be supported by market evidence. In addition, if there is insufficient market data on the market effect of improvement bonds, then this measure would provide that an adjustment is inappropriate.

8. **Improvement bonds sales price adjustments viewed as a tax on a tax.** When the assessor values a property for property tax purposes at a value higher than the nominal sales price agreed to between the buyer and the seller, the new owner is often surprised, since there is an expectation that the assessed value will be the nominal sales price paid. When the reason for the adjustment is the addition of improvement bond amounts, homeowners often express concern that the addition for the bonds constitutes double taxation. It is understandable why homeowners feel this way since homeowners often consider the bond payment to be a "tax" rather than a payment on a loan. This belief is reinforced since the mechanism most typically used to collect the bond payment is the annual property tax bill. Thus, from the homeowner's perspective, not only are they paying a "tax," they are also paying taxes on the tax.

9. **Implementation Issues.** In some instances, it may be difficult and/or impossible to find sufficient market data to measure the difference, if any, between fair market value and sales price when the subject property is encumbered by an improvement bond. For instance, in newer developments the sales prices of comparable properties in the relevant surrounding area may also be encumbered by improvement bonds or may have been financed with Mello-Roos bonds. In this case, comparable sales from an area where development occurred without the use of bonds would be used. Sales from those geographical areas may not be comparable in terms of location or desirability and would require further adjustments to extract the bond element. With respect to established areas, there may be no sales of comparable property within the relevant area where a previous owner prepaid the bond debt to retire it early, in order to gather the

raw data used to determine how prepaying a bond affects the nominal sales price.

10. **How Do Improvement Bonds Differ From Mello-Roos Bonds?** There are generally three ways to fund land development costs, that is 1) developer-provided funds; 2) Mello-Roos bonds; and 3) improvement bonds. Since 1983, Mello-Roos Community Facility Districts have become a popular way to finance real estate development. These districts issue Mello-Roos bonds which, in addition to funding on-site improvements that could be financed by an improvement bond, can be used to pay for schools, parks, fire stations, libraries, and freeway interchanges. Mello-Roos bonds are not tied to any specific property, rather the district is authorized to tax property in the district at a maximum rate to pay the debt service on the bonds. Both improvement bonds and Mello-Roos Bonds allow property to be offered for a lower price since all development costs are not captured in the selling price. But property subject to Mello-Roos is not subject to a sales price adjustment under the theory that 1) it is a tax; and 2) it is not limited to improvements that directly benefit the property.

**Senate Bill 2174 (Rainey) Chapter 1049**
***Public Records Act***

*Effective January 1, 1999. Adds Section 6257.5 to, and Chapter 3 (commencing with Section 15650) to Part 9 of Division 3 of Title 2 of, the Government Code.*

**This bill specifies that, for all agencies subject to the California Public Records Act (Government Code Section 6250 et seq.), no limitations on access to a public record may be made based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure. This bill would also require the Board of Equalization to adopt regulations to establish procedures and guidelines to access public records, and to study and report to the Legislature by January 1, 2000, concerning the feasibility and cost of indexing its public records.**

***Sponsor: Associated Sales Tax Consultants***

***Law Prior to Amendment:***

Under existing law, the Public Records Act (commencing with Section 6250 of the Government Code) provides for public access to any record maintained by a state and local agency, including the Board of Equalization (Board), unless there is a statutory exemption that allows or requires the agency to withhold the record.

In State Board of Equalization v. Superior Court, 10 Cal.App.4th 1177, the court decided that the Board could not withhold disclosure of its “working law” merely because such documents contained confidential taxpayer information, since the confidential information could be excised without destroying the utility of the documents. Specifically, the court directed the Board to disclose to Associated Sales Tax Consultants (ASTC) certain records, with confidential information excised, which showed the Board’s practice in interpreting and applying two Sales and Use Tax regulations.

The Public Records Act requires that within 10 days after receipt of a request for copies of records, the agency must determine whether it will comply with or deny the request and must immediately notify the person making the request of such determination and the reasons for the determination (Government Code Section 6256). Government Code section 6257 provides that the agency "upon request for a copy of records ... shall make the records promptly available." Current case law provides for a flexible time limit for providing copies of records to the public, based on a reasonableness standard (Rogers v. Superior Court 19 Cal. App. 4th 469, 483 (1993).). Reasonableness is determined by the circumstances of the request.

The Board is in full compliance with the Public Records Act and State Board of Equalization v. Superior Court. The Board provides copies of public records, with confidential taxpayer information redacted, upon request. Consistent with the size and nature of the request, the Board provides copies of public records within a reasonable amount of time.

***Comments:***

1. **Purpose:** This bill is intended to provide easier access to public records.

2. **This bill would establish additional public records requirements applicable only to the Board.** The Board would be required to adopt regulations that specifically identifies and describes the various types of Board public records that pertain to its tax and fee programs.

3. **This bill would require the Board to study and report to the Legislature the feasibility and cost to create and maintain a subject matter index of all public records pertaining to Board-administered tax and fee programs.** The Board has been exploring the feasibility of establishing a Board-wide centralized index and filing system for all documents used by the staff for tax administration; however, this project has not yet been completed.

**Senate Bill 2235 (Committee on Revenue and Taxation) Chapter 695**
***Property Tax Omnibus Measure***

*Effective January 1, 1999. Amends Sections 214, 254.5, 275.5, 619, and 1605.6 of, amends and renumbers Sections 11472 and 11473 of, adds Sections 11472 and 11475 to, and to repeal and add Section 11471 of, the Revenue and Taxation Code.*

**This measure:**

1. **Clarifies that housing projects for the disabled that are financed under Section 811 of Public Law 101-625 are eligible for the welfare exemption.** *§214*
2. **Corrects an erroneous final filing date reference for welfare exemption claims from March 15 to February 15.** *§254.5*
3. **Corrects an erroneous filing date reference for documented vessel exemption claims from the 1st to the 15th of February.** *§275.5*
4. **Corrects an erroneous cross reference to Section 51.** *§619*
5. **Places a statute of limitations on the Board's ability to bring a cause of action to collect delinquent taxes on private railroad cars.** *§11471*
6. **Specifies that the Code of Civil Procedure is applicable to tax collection proceedings relating to private railroad cars.** *§11472*
7. **Specifies the manner that process may be served in private railroad car tax collection proceedings consistent with other tax programs administered by the board.** *§11475*
8. **Renumbers Sections 11472 and 11473 to Sections 11473 and 11474, respectively.**

## Disabled Housing Projects

**This provision clarifies that housing projects for the disabled financed under Section 811 of Public Law 101-625 are eligible for the welfare exemption.**

***Sponsor: California Rehabilitation Association***

***Law Prior To Amendment:***

Section 214(f) of the Revenue and Taxation Code generally provides that housing for elderly and/or handicapped persons is eligible for the welfare exemption if it (1) provides supplemental care (i.e. skilled nursing) or services (i.e. meals and transportation), or (2) is financed by the federal government

***In General:***

Revenue and Taxation Code Section 214 outlines the conditions and qualifications for receiving the welfare 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 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:***

Recent changes to federal law separated previously combined provisions related to elderly and disabled housing projects. The provisions related to elderly housing projects remain in Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q) while the provisions related to disabled housing projects were moved to Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013). Not all tax practitioners are aware of the financing provisions pursuant to Section 811. Consequently, some operators of disabled housing projects have been required to file additional documentation in order to receive the welfare exemption.

This provision was contained in Senate Bill SB 1873 (Senate Revenue & Taxation Committee) as introduced but was amended out of the bill on March 24, 1998.

***Comments:***

1. **Purpose.** The purpose of this measure is to ensure that housing for disabled persons financed under Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), rather than Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), are clearly recognizable by tax practitioners as properties eligible for property tax exemption under the welfare exemption.

2. **This provision is declaratory of existing law.** The federal government financing programs for housing the elderly or disabled enumerated in subdivision (f) of Section 214 are not inclusive. Section 214(f) provides that qualifying federal financing provisions, include, but are not limited to, those sections listed. Thus, by adding a reference to Section 811, this measure would only serve to clarify existing law and ensure that housing projects for disabled persons funded under that particular program are not denied the welfare exemption or required to file additional supporting documentation in order to receive the exemption.

## Conforming Statutory Dates To New Uniform Filing Date For Exemptions

**Corrects an erroneous final filing date reference for welfare exemption claims from March 15 to February 15. §254.5**

**Corrects an erroneous filing date reference for documented vessel exemption claims from the 1st to the 15th of February. §275.5**

*Sponsor: Board of Equalization*

*Background:*

A uniform final filing date of February 15 was recently established for all exemptions where a claim is required to be filed to receive the exemption. Two cross references to filing dates found in late filing provisions were not amended in conformance with the new uniform date.

**Late Welfare Exemption Claims.** Last year, SB 542 (SRT) amended Section 255 to create a uniform final filing date of February 15 for all exemptions where a claim is required to receive the exemption. However, Section 254.5, which contained a separate reference to the last date to file a claim for the welfare exemption, was not updated to reflect the uniform date. It still refers to March 15. This provision would amend Section 254.5 to correct the inconsistency in filing dates for the welfare exemption now found between Sections 255 and 254.5.

**Documented Vessels.** SB 542 also amended Section 275.5 in establishing a uniform filing date for all exemptions. Section 275.5 permits a partial exemption if the claim for the documented vessel exemption is filed late. It also contains a reference to the date claims must be filed to receive the full amount of the exemption. SB 542 changed this reference to reflect the correct month claims must be filed from April to February, but the date of the month was not changed. This provision is a non-Board sponsored technical amendment that would change the date of the month from the 1st to the 15th of February consistent with the uniform filing date.

## Electronically Mailing Assessment Appeal Notices

**At the option of the clerk of the county board of equalization, the notice required by this section may be electronically transmitted, if requested in writing by the taxpayer, to an electronic address designated by the taxpayer. The clerk may also opt to electronically transmit the notice required by this section to the assessor, if requested by the assessor, to an electronic address designated by the assessor.**

***Source: County Clerks Association***

## Private Railroad Cars

**These provisions:**

1. **Place a statute of limitations on the Board's ability to bring a cause of action to collect delinquent taxes on private railroad cars. §11471**
2. **Specify that the Code of Civil Procedure is applicable to tax collection proceedings relating to private railroad cars. §11472**
3. **Specify the manner that process may be served in private railroad car tax collection proceedings consistent with other tax programs administered by the board. §11475**
4. **Renumber Sections 11472 and 11473 to Sections 11473 to 11474, respectively.**

***Law Prior to Amendment:***

The law previous to this amendment lacked a statute of limitations on the Board's right to sue to collect delinquent taxes on private railroad cars. In addition, various provisions related to private railroad car collection matters were not uniform with the collection procedures of other Board administered tax programs.

***Sponsor: Board of Equalization***

***In General:***

Part 6 of Division 2 of the Revenue and Taxation Code (commencing with section 11201) sets forth the procedures for assessing the state property tax on private railroad cars (PRRCs). The PRRCs taxed under this division are owned by firms other than railroad companies. PRRCs are generally owned by companies who haul their own products or lease cars to shippers. Examples of privately owned railroad cars include express cars, refrigerator cars, oil or tank cars, horse or stock cars, fruit cars, and cars specifically designed for carrying a certain commodity. The Private Railroad Car Tax is directly levied and retained by the state and is in lieu of all other state and local ad valorem property taxes on private railroad cars. The cars are assessed and taxed by the state since it is impractical for individual counties to subject railroad cars, which can be moved frequently, to the local property tax.

***Comments:***

1. **Purpose.** The purpose of these changes are to make the tax collection procedures on private railroad cars uniform with other tax programs administered by the board. Section 11471 would place a statute of limitations on the Board's right to bring a cause of action. The lack of any limitation is disfavored by the courts and could result in a judicial finding that the statute is void due to vagueness. Section 11472 would specify that the Board's actions to

collect private railroad car taxes are governed by the Code of Civil Procedures in a manner consistent with other tax programs administered by the board. Section 11475 would require that service of process be consistent with the other tax programs administered by the Board.

**Senate Bill 2237 (Committee on Revenue and Taxation) Chapter 591**
***Property Tax Omnibus Measure***

*Effective January 1, 1999. Amends Section 25105.5 of the Government Code, amends Section 4582.8 of the Public Resources Code, and amends Sections 64, 75.21, 452, and 5802 of, and adds Sections 207.1 and 38116 to, the Revenue and Taxation Code*

**This measure:**

1. **Streamlines filing requirements for exempt organizations.** ***§75.21***
2. **Clarifies that personal property leased by churches is eligible for exemption from property taxes under the religious exemption.** ***§207.1***
3. **Changes the date that the Board must notify assessors of prescribed changes to the property statements.** ***§452***
4. **Corrects cross reference errors.** ***§64, §5802***
5. **Allows small harvests of timber that are not cost effective to administer to be exempted from the timber yield tax.** ***§38116***
6. **Requires that documents transmitted to the Board by the Department of Forestry contain specified information. Public Resources Code** ***§4582.8***
7. **Reduces, from five to three, the number of years that original assessment appeal applications must be held prior to destruction, provided they have been preserved using advanced document storage mediums.** ***Government Code §25105.5***

***Sponsor: See Detail***

## Supplemental Assessments - Exemption Claims

**This provision streamlines filing requirements for exempt organizations.**

*Sponsor: Board of Equalization and California Assessors' Association*

***Law Prior to Amendment:***

Under existing law, many non-profit organizations, already receiving a property tax exemption, have to file as many as four separate claims for exemption for purposes of supplemental assessments. The additional claims for exemptions include claims for pro rata exemptions and exemptions for both the current and prior roll years.

***Comments:***

1. The purpose of this amendment is to reduce the number of times an exempt organization would need to file a claim to extend their exemption to a supplemental assessment.

## Religious Exemption - Leased Personal Property

**This measure clarifies that personal property leased by churches is eligible for exemption from property taxes under the religious exemption.**

*Sponsor: Board of Equalization and California Assessors' Association*

***Law Prior to Amendment:***

Under current law organizations receiving the religious exemption are required to file an annual church exemption to exempt any personal property that they lease. This measure specifically states that personal property leased by churches is eligible for the religious exemption.

***Comments:***

1. **Purpose.** The purpose of this measure is to eliminate the need for churches to file a church exemption claim if they are already receiving the religious exemption.

## Business Property Statement Prototypes

**Changes the date that the Board must notify assessors of prescribed changes to the property statements.**

***Sponsor: Board of Equalization and California Assessors' Association***

***Law Prior to Amendment:***

Existing Section 452 of the Revenue and Taxation Code requires the Board to notify assessors of prescribed changes to property statements at least six months prior to the lien date for which the changes will be effective. Legislation effective in 1997 moved the annual property tax lien date from March 1 to January 1. With the change in the lien date, the deadline for the Board to notify assessors of prescribed changes to property statements moved forward from August 31 to June 30.

***Background:***

The earlier June 30 deadline presents a practical problem for the Board, since any bills that affect the content of property statements may not be far along in the legislative process. The Board had traditionally incorporated anticipated statutory changes to the prototype form sent to assessors by August 31. Those anticipated changes not ultimately enacted into law were deleted from the form when assessors submitted their customized forms for final approval by the Board. Although the proposed date of August 31 still falls before the date all law changes for the following year will be known, it gives the Board more time to evaluate the statutes of pending legislation, as was the existing practice prior to the lien date changeover, so that fewer changes will be needed to be made to the prototype form that is sent at the beginning of the form approval process.

***Comments:***

1. **Purpose.** Specifies a date of August 31st, rather than "six months" before the lien date in recognition of the lien date change to January 1.

## Timber Yield Tax Low Value Exemption

**This provision allows the Board to exempt small timber harvests from the timber yield tax when they are not cost effective to collect. The maximum value of timber harvests that could be exempted under this low value exemption would be $3000. The criteria established for qualification for the exemption would be established by Board of Equalization rule. In addition, this measure would require that the Department of Forestry revise its Notice of Exemption and Notice of Emergency documents provided to the Board of Equalization pursuant to Section 4582.8 of the Public Resources Code to include information determined by the Board of Equalization to be necessary to identify timber that may qualify for exemption.**

***Sponsor: Board of Equalization***

***Law Prior to Amendment:***

Section 155.20 of the Revenue and Taxation Code gives Boards of Supervisors the authority to exempt from property taxation small amounts that, if not exempt, the taxes on the property would amount to less than the cost of assessing and collecting them. The Board of Equalization does not have similar authority with respect to the Timber Yield Tax.

***In General:***

The Timber Yield Tax is an in lieu property tax paid by timber owners when they harvest trees or timber. The amount of tax is calculated according to the volume of timber harvested, the established value for the species harvested, and the tax rate, which is currently 2.9 percent. The tax is paid on a quarterly basis to the State Board of Equalization which administers the tax on behalf of local government. Twice a year the Board, in conjunction with the State Controller's Office, returns the proceeds of the Timber Yield Tax, less the state's cost to administer the tax program, to the counties where the timber was harvested.

***Background:***

Many changes have occurred in the timber market since 1977 when the California Timber Yield Tax Law became effective. Due to the increased demand for timber from private timberlands, a substantial increase in the value of the trees, and recent changes in forest harvest regulations, there has been a vast increase in harvest operations that are extremely limited in size. Many of these harvests are from rural home sites where a few trees are harvested for fire protection or to otherwise remove hazard trees from these parcels.

***Comments:***

1. **Purpose.** The Board's cost to administer the yield tax on small timber harvests often exceeds the amount of tax collected. Unfortunately, the Timber Yield Tax Law provides no avenue for the Board to exempt these small harvests from the tax similar to the authority granted to counties to adopt low value ordinances under Revenue and Taxation Code §155.20. A large percentage of the accounts opened for timber tax purposes, are for small, one-time timber harvest operations. Although these small harvest operations represent a large portion of the total accounts opened, these accounts produce an inordinately small portion of the total tax collected. In the interest of economic and budgetary efficiency, an exemption of these small harvest activities would reduce the workload of Board staff and would relieve taxpayers from the burden of reporting and paying tax on transactions which cost more to process and collect than the amount of tax ultimately collected.

2. **Revenue Loss Offset By Cost Savings.** The revenue and cost effect of this measure depend upon the level at which the exemption level is set. It is estimated that any revenue loss would be more than offset by the cost associated with processing tax returns that are not cost effective.

3. **$3,000 Low Value Threshold.** The July 1, 1998, amendment added subdivision (b) to Section 38116 to limit the Board's authority to exempt timber with a harvest value of more than $3,000 under a low value exemption provision. This amendment was added at the request of some county assessors.

## Assessment Appeal Application - Document Retention

**This provision would reduce the time that original assessment appeal applications must be held if otherwise preserved using advanced technologies.**

***Sponsor: County Clerks Association***

***Law Prior to Amendment:***

Section 25105.5 of the Government Code relates to the destruction of assessment appeals applications received by the clerk of the board of supervisors. This section did not allow for the destruction of applications until at least five years had elapsed since final action on the application.

***Comments:***

1. **Purpose.** The purpose of this provision is to permit the storage of assessment appeal applications on a media other than the original paper media. Advanced technologies provide more ready access to original documents while decreasing storage area needs.

## Cross Reference Corrections

**These provisions would correct cross reference errors.**

***Sponsor: Board of Equalization and California Assessors' Association***

***Comments:***

1. Senate Bill 44 (Chapter 388, Statutes of 1996) redesignated the subdivisions of Section 61 of the Revenue and Taxation Code. The former subdivision (h) is now subdivision (i). However, conforming changes were not made to the reference to this section in Section 64. This measure would correct the reference in Section 64 to reflect the relettered subdivision of Section 61. This provision is also contained in SB 1103 (Alpert) by May 19 amendments to that bill.

2. Senate Bill 1431 (Chapter 1222, Statutes of 1994) added subdivision (c) to Section 5802 of the Revenue and Taxation Code to define the "base year value" of a manufactured home converted from vehicle license fee status to the local property tax roll. However, subdivision (a) of Section 5802, which generally defines "base year value" for purposes of the Manufactured Home Property Tax Law, was not amended to account for the 1994 addition of subdivision (c). This measure would add the reference to subdivision (c) in Section 5802. This

provision is also contained in SB 1103 (Alpert) by May 19 amendments to that bill.

# TABLE OF SECTIONS AFFECTED

| SECTIONS | | BILL NUMBER | CHAPTER NUMBER | SUBJECT |
|---|---|---|---|---|
| **Revenue & Taxation Code** | | | | |
| § 53.5 | Add | AB 1246 | Ch. 226 | Mining Property: Heap Leach Pads; Tailings Facilities; and Settling Pads |
| § 62.1 | Amend | AB 2384 | Ch. 139 | Manufactured Homes |
| § 64 | Amend | SB 1103<br>SB 2237 | Ch. 583<br>Ch. 591 | Cross Reference Error |
| § 73 | Add | AB 1755 | Ch. 55 | Solar Energy New Construction Exclusion |
| § 75.21 Amend | | SB 2237 | Ch. 591 | Welfare Exemption; Supplemental Assessments |
| §107.9 | Add | AB 2318 | Ch. 85 | Airlines; Possessory Interests in Airports |
| § 110 | Amend | SB 1997 | Ch. 783 | Improvement Bonds |
| § 203 | Amend | SB 218 | Ch. 562 | Flight Test Schools; College Exemption |
| § 207.1 | Add | SB 2237 | Ch. 591 | Personal Property Leased by Churches |
| § 214 | Amend | SB 2235 | Ch. 695 | Disabled Housing Projects |
| § 254.5 Amend | | SB 2235 | Ch. 695 | Welfare Exemption; Filing Deadline |
| § 275.5 Amend | | SB 2235 | Ch. 695 | Documented Vessels; Filing Deadline |
| § 401.15 | Add | AB 1807 | Ch. 86 | Certificated Aircraft |
| § 423.4 | Amend | SB 1182 | Ch. 353 | Farmland Security Zones |
| § 426 | Amend | SB 1182 | Ch. 353 | Farmland Security Zones |
| § 452 | Amend | SB 2237 | Ch. 591 | Property Statement Prototype |
| § 465 | Amend | SB 1103 | Ch. 583 | Documents; Microfiche & Computer Imaging |
| § 619 | Amend | SB 2235 | Ch. 695 | Cross Reference Error |

# TABLE OF SECTIONS AFFECTED

| SECTIONS | | BILL NUMBER | CHAPTER NUMBER | SUBJECT |
|---|---|---|---|---|
| **Revenue & Taxation Code** | | | | |
| § 834 | Amend | SB 1103 | Ch. 583 | Documents; Microfiche & Computer Imaging |
| § 995.2 | Amend | SB 1103 | Ch. 583 | Cross Reference Error |
| § 1605.6 | Amend | SB 2235 | Ch. 695 | E-Mailing Assessment Appeal Notices |
| § 5103 | Add | SB 30 | Ch. 87 | Property Tax Refunds; Credits On Future Liabilities |
| § 5096.3 | Add | AB 1807 | Ch. 86 | Airline Tax Credits |
| § 5802 Amend | | SB 1103<br>SB 2237 | Ch. 583<br>Ch. 591 | Cross Reference Error |
| § 11471 – § 11475 | Amend | SB 2235 | Ch. 695 | Private Rail Road Car; Collection Procedures |
| §38116 Amend | | SB 2237 | Ch. 591 | Timber Harvest Low Value Exemption |
| **Government Code** | | | | |
| § 16140 - Amend § 16142 | | SB 1182 | Ch. 353 | Farmland Security Zones |
| § 16146 Amend | | SB 1182 | Ch. 353 | Farmland Security Zones |
| § 25105.5 Amend | | SB 2237 | Ch. 591 | Assessment Appeal Application; Destruction of Records |
| **Public Resources** | | | | |
| §4582.8 | Amend | SB 2237 | Ch. 591 | Dept of Forestry Transmittal |