

[Assembly Bill 2663](#) (Friedman)

Date: Introduced (2/15/2018)

Program: Property Taxes

Sponsor: Author

Revenue and Taxation Code Sections 62 and 5097

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**Summary:** Provides a retroactive change in ownership exclusion for any transfer of real property between local registered domestic partners occurring between January 1, 2000 and June 26, 2015.

**Fiscal Impact Summary:** For every local registered domestic partner change in ownership reassessment reversal, the average local revenue loss per event is estimated to be \$560, multiplied by the number of years the taxpayer is found to have exceeded taxes due.

**Existing Law:** Under existing property tax law, real property is reassessed to its current fair market value whenever there is a “change in ownership.” Beginning January 1, 2000, the law<sup>1</sup> provides that a change in ownership does not include any transfer between registered domestic partners, defined<sup>2</sup> as two natural persons over the age of 18 years who enter into a registered domestic partnership by filing a [Declaration of Domestic Partnership](#) form with the California [Secretary of State](#). Property tax law<sup>3</sup> also describes the more common transfers of property interests between registered domestic partners that may be excluded, such as those resulting from death, dissolution of a registered domestic partnership, and creation of a trust.

Current law does not provide any exclusion from change in ownership for transfers of real property between domestic partners who are registered with a local government, but not the California Secretary of State.

**Proposed Law:** This bill excludes from the definition of “change in ownership” any transfer of property occurring on or after January 1, 2000, to June 26, 2015 between local registered domestic partners, defined as a registered domestic partnership established by a city, county, city and county, or special district where the registrants were of the same sex at the time of registration and the registrants were not married or in a registered domestic partnership with any other person at the time of transfer. The bill allows any transferee whose property was reassessed in contravention of this provision to obtain a reversal of that reassessment, cancellation of the amount of the reassessment, and refund of overpayment that resulted from the reassessment.

**Background:** Effective January 1, 2000, [Assembly Bill 26](#) (Stats. 1999, ch. 588) established a statewide domestic partner registry, granted hospital visitation rights to registered domestic partners, and provided for health benefit coverage for the registered domestic partners of state employees. In 2003, [Assembly Bill 205](#) (Stats. 2003, ch. 421) enacted the California Domestic Partner Rights and Responsibilities Act of 2003. Assembly Bill 205 provided that registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law as are granted to and imposed upon spouses.

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<sup>1</sup> Revenue and Taxation Code (RTC) [section 62\(p\)](#).

<sup>2</sup> Family Code [section 297](#).

<sup>3</sup> RTC section 62(p).

The change in ownership exclusion for domestic partners registered with the California Secretary of State was added to the Revenue and Taxation Code ([Senate Bill 565](#), Stats. 2005, ch. 416), commencing January 1, 2006.<sup>4</sup> Transfers between registered domestic partners prior to January 1, 2006, were subject to reassessment. However, there were a few exceptions, expressly provided in administrative regulations that became effective on November 13, 2003. Specifically:

- Property Tax Rule [462.040](#) provides, generally, that in the case where property is owned by persons, such as registered domestic partners, in the form of a “joint tenancy,” then transfers of joint tenancy interests between these co-owners, under specified conditions, may not constitute a change in ownership.
- Property Tax Rule 462.240(k)<sup>5</sup> provided that any transfer of separate property inherited by a surviving domestic partner by intestate succession upon the death of a registered domestic partner did not constitute a change in ownership.

Subsequently, [Senate Bill 559](#) (Stats. 2007, ch. 555) amended RTC section 62(p) to provide retrospective relief for any transfer of real property between registered domestic partners that occurred between January 1, 2000, and January 1, 2006. This change provided that a reassessment that occurred between those dates could be reversed beginning with the lien date of the assessment year in which the claim was filed. Property tax relief was prospective only; Senate Bill 559 expressly provided that property tax refunds would not be made for any prior assessment year. To receive a reversal of a reassessment, a property owner had to file a claim form with the county assessor by June 30, 2009.<sup>6</sup>

### Commentary:

1. **California’s Domestic Partners Registry became effective on January 1, 2000.** Persons eligible to register with the Secretary of State as domestic partners include persons of the same sex in a committed relationship, as well as committed opposite-sex relationships where one partner is 62 years or older, that share a common residence.
2. **Current law provides a change in ownership exclusion for persons who are registered with the California Secretary of State.** Effective January 1, 2000, transfers of real property between registered domestic partners no longer trigger a reassessment of real property as provided in RTC section 62(p). This exclusion for registered domestic partners is limited to those who are registered with the California Secretary of State. Current law does not provide a change in ownership exclusion for local registered domestic partners.
3. **This bill would reverse any reassessment of real property due to a transfer of interests between local registered domestic partners that occurred after the creation of the Registry through June 26, 2015.** Generally, transfers of real property between co-owners with equal ownership in the property are subject to either a 0%, 50% or 100% reappraisal to fair market value as of the date of the transfer. In these instances, the date of the transfer would typically have been the date of a partner’s death or termination of a domestic partnership. The percentage of the property subject to reappraisal would have depended upon how the property was held and the manner in which the co-owner was added to the title of the home. Under this

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<sup>4</sup> RTC section 62(p) specifically defines “registered domestic partners” by reference to Family Code section 297, which provides for the California Secretary of State registry.

<sup>5</sup> The provisions of Rule [462.240](#), subdivision (k) were replaced with subdivision (l), which references RTC section 62(p).

<sup>6</sup> See Letter To Assessors No. [2007/043](#).

bill, any reappraisal that occurred during the specified time period due to a transfer between locally registered domestic partners would be reversed on a retroactive basis. (RTC sections 62(q)(2) and 5097(a)(2) as proposed.)

4. **Retroactive relief.** As drafted, Assembly Bill 2663 provides a retroactive change in ownership exclusion for transfers of real property between local registered domestic partners that occurred January 1, 2000 through June 26, 2015 (RTC section 62(q)(1)). Previous changes in law provided retrospective relief, meaning that reassessments were reversed on a prospective basis. Specifically, RTC section 62(j) provides for transfers between co-owners occurring between 1975 and 1981, RTC section 62(n) for transfers between parents and disabled children occurring between 1975 and 1984, and RTC section 62(p) for transfers between persons registered with the California Secretary of State as domestic partners occurring between 2000 and 2006. In these situations, no refunds were authorized. Therefore, domestic partners registered with the Secretary of State between 2000 and 2006 were not eligible for refunds, while Assembly Bill 2663 will make refunds available for locally registered domestic partners during the same time frame.
5. **Restores Proposition protected value.** For transfers of an interest in real property between local registered domestic partners that occurred January 1, 2000 through June 26, 2015, these property owners would pay the same amount of property taxes on their property as they did prior to the reassessment (plus any inflationary increases).
6. **Any transfers of an interest in real property between local registered domestic partners that occur after June 26, 2015 would be subject to reassessment.** As drafted, Assembly Bill 2663 provides for retroactive relief, but no relief after June 26, 2015. Current law does not provide a change in ownership exclusion for local registered domestic partners.
7. **The June 26, 2015 United States Supreme Court ruling did not change any of the Family Code sections related to registered domestic partners.** The June 26, 2015, United States Supreme Court ruling in *Obergefell v. Hodges* (regarding the right to a same-sex marriage and whether states must recognize same-sex marriages performed in other states) did not invalidate or change any of the California Family Code sections related to registered domestic partners. Domestic partnership registrations are different from marriage licenses. While registered domestic partners may have the same rights, protections, and benefits and be subject to the same responsibilities, obligations, and duties under law as are granted to and imposed upon spouses, registered domestic partners are not married and are not considered spouses.
8. **Local registered domestic partner.** As drafted, Assembly Bill 2663 provides a definition of a local registered domestic *partnership* (RTC section 62(q)(3)), not a definition of a local registered domestic *partner*. The author may want to clarify that local registered domestic partners are persons who entered into a domestic partnership and registered with their local government.
9. **How would this relief occur?** The bill that added retrospective relief to RTC section 62(p) required property owners to file a claim with the county assessor by a certain date and required that the claim would be prescribed by the State Board of Equalization.<sup>7</sup> As drafted, Assembly Bill 2663 does not provide a time frame within which a claimant must apply for relief or an administrative method by which property owners could receive this relief. Without clarification,

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<sup>7</sup> RTC Section 62, subdivisions (p)(2) and (p)(2)(A).

each county assessor would create their own administrative method of providing relief under this bill. Additionally, the bill that added retrospective relief to RTC section 62(p) provided that a county could charge a fee for its costs related to the application and reassessment reversal in an amount that did not exceed the actual costs incurred. As drafted, Assembly Bill 2663 does not provide that a county may charge a fee for such costs.

**Costs:** The State Board of Equalization would incur some minor absorbable costs in informing local county assessors, the public, and staff of the law changes.

**Revenue Impact: Background, Methodology, and Assumptions.** Current property tax law excludes certain transfers of real property from classification as a change in ownership triggering reappraisal of the subject property, including domestic partners registered with the California Secretary of State. Assembly Bill 2663 extends this exclusion to registered domestic partner established by a local government. Existing law also prohibits a refund of property taxes from being made except on a claim filed within 4 years after making the payment sought to be refunded. Assembly Bill 2663 provides that this prohibition does not apply to these refunds.

Regarding earlier legislation extending the rights and duties of marriage to persons registered as domestic partners in California, statistics are readily available from both the Secretary of State and the U.S. Census Bureau. However, staff found little data available with specific regard to local registered domestic partners.

Staff conducted a recent survey of local governments, returning the following results:

- The City and County of San Francisco reported over 14,000 local registered domestic partnerships established since 1997.
- The City of Oakland reported about 1,350 local registered domestic partners since the year 2000.
- Los Angeles County stated local registered domestic partner numbers in the several thousands, but did not provide an exact number.
- Marin County reported 659 local registered domestic partnerships established since the year 2000.

These totals represent only a small number of local governments surveyed. The total number of local registered domestic partners throughout all of California is difficult to estimate. We also do not know how many local registered domestic partners may have also been registered with the Secretary of State. Additionally, within that total at the local level, it is even more difficult to determine the total number of change in ownership reassessments over a fifteen-and-a-half year period. Further, when there was a real property transfer between local registered domestic partners, in some instances, a 100 percent reappraisal may have occurred when there were only two owners in joint tenancy. Alternatively, if the property were held by two owners in tenancy in common, this type of transfer resulted in just a 50 percent reappraisal. Consequently, there are too many possible scenarios and not nearly enough hard data to try to determine the total number of change in ownership events under Assembly Bill 2663.

While we cannot estimate the average impact per event on commercial change in ownership reassessments, we can attempt to provide an order of magnitude as Assembly Bill 2663 relates to residential property. Staff estimated the impact of a single reassessment on average based on available

data for the affected period. According to the California Association of Realtors, the median California home price average between January 2000 and June 2015 was about \$386,000. This period covers both boom and bust periods in the California real estate market. The average assessed value of a property receiving the homeowners' exemption during the same period was \$274,000. The average assessed value difference then was about \$112,000 (\$386,000 - \$274,000). Multiplying by  $\frac{1}{2}$  to adjust for the effect of tenancy in common ownership brings the total amount of affected value to \$56,000 ( $\$112,000 \times \frac{1}{2}$ ), or \$560 on average per reassessment at the basic 1 percent property tax rate. This would be multiplied by the number of years the taxpayer is found to have exceeded taxes due under this bill.

**Revenue Summary.** Staff is unable to determine the impact on commercial reassessments under this proposal. Under Assembly Bill 2663, for every local registered domestic partnership change in ownership reassessment reversal of residential property, the average local revenue loss per event is \$560, multiplied by the number of years the taxpayer is found to have exceeded taxes due under this bill.

**Qualifying Remarks.** This estimate does not account for the effect of the annual inflation factor applied to real property assessments. Consequently, the earlier the reassessment during the affected period, the greater the impact of an annual inflation factor. This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.