California State
Board *of* Equalization

LEGISLATIVE BULLETIN

PROPERTY TAX LEGISLATION 2024

Legislative, Research & Statistics Division

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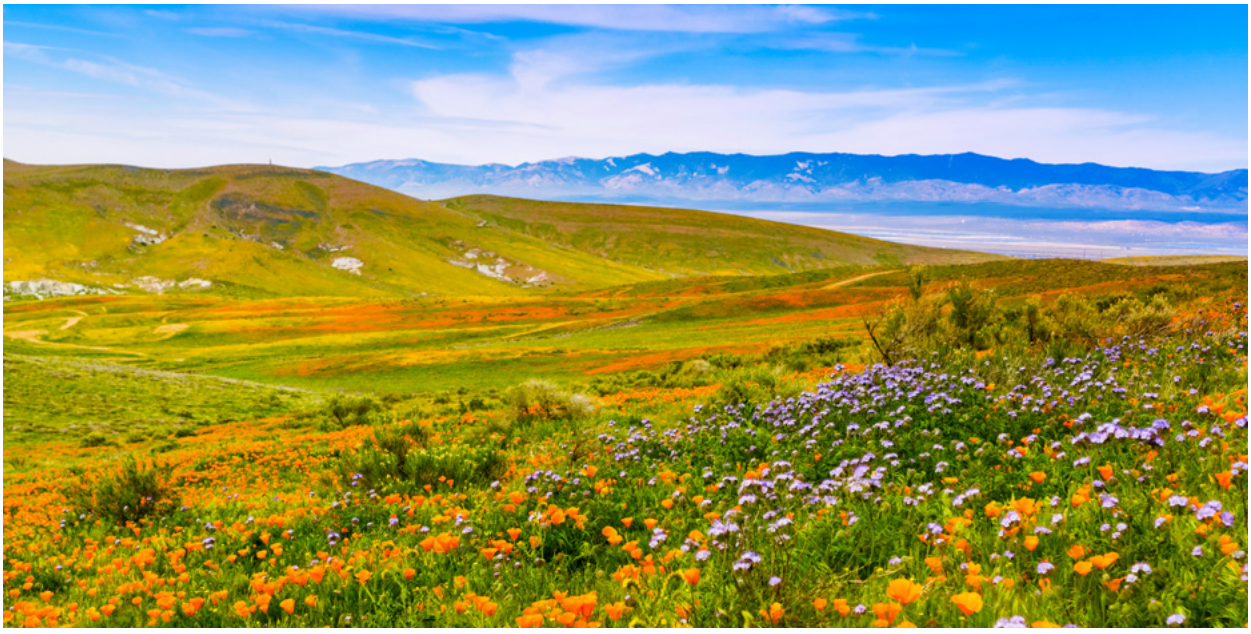
FOREWORD

The California State Board of Equalization's (BOE) Legislative, Research & Statistics Division (LRSD) is responsible for all aspects of the BOE's legislation, research, and statistics for the tax programs that the BOE administers. The LRSD reviews all introduced and amended bills, and the review is used to identify legislation that could impact or be of interest to the BOE.

The Property Tax Legislative Bulletin is an annual publication that describes the enacted legislation in the past year that impacts property tax programs administered by the BOE. This publication is a compilation of the legislative bill analyses issued by the BOE for bills that were enacted during 2024. The legislative bill analyses for 2024 are posted on the BOE's website at *www.boe.ca.gov/app/proptax-leg-analyses.aspx?year=2023-2024*.

This staff analysis is provided to address various administrative, cost, revenue, and policy issues. It is not to be construed to reflect or suggest the BOE's formal position.



2024 PROPERTY TAX LEGISLATION
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Assembly Bill 1868 (Friedman)—Chapter 553

Property Taxation: Assessments: Affordable Housing

Effective January 1, 2025

Amends Revenue and Taxation Code section 402.1

Summary: For purposes of valuing property by the County Assessor, this new law establishes a rebuttable presumption that, at the time of purchase, the value of real property subject to a recorded contract that meets certain affordability requirements will exclude the deed of trust value.

Fiscal Impact Summary: The bill will result in an indeterminable revenue loss.

Existing Law: Purchase Price. Under the California Constitution, all property is taxable unless otherwise provided for by the State Constitution or the laws of the United States.[1] Existing law requires that locally assessed real property subject to Proposition 13 is reassessed to its current fair market value upon a change in ownership or new construction.[2] Revenue and Taxation Code (R&TC) section 110 establishes a rebuttable presumption that after a change in ownership, the 'fair market value' of the property is the purchase price paid if the terms were negotiated under specified conditions reflecting an open market transaction. R&TC section 110(b) further defines 'purchase price' to mean the total consideration provided by the purchaser or on the purchaser's behalf, valued in money, whether paid in money or otherwise.

Land Use Restrictions. When determining a property's fair market value, property tax law requires the Assessor to consider the effect of enforceable restrictions on a property's use.[3] Similarly, when assessing land, the law requires the assessor to consider the effect upon the value of any enforceable restrictions to which the use of land may be subjected.[4]

Homes on land with a 30-year use restriction as owner-occupied housing. Relevant to this bill, R&TC section 402.1(a)(10) currently requires an Assessor to consider restrictions imposed by certain nonprofit corporations when determining the value of a home purchased from a nonprofit corporation housing program. Certain contractual conditions must exist in order for an Assessor to consider the impact of these restrictions on land value:

- The contract must be with a nonprofit corporation organized pursuant to Internal Revenue Code section 501(c)(3) that has received a welfare exemption under R&TC section 214.15 for properties intended to be sold to low-income families who participate in a special no-interest loan program.
- The contract must restrict the use of the land for at least 30 years to owner-occupied housing available at affordable housing cost in accordance with Health and Safety Code section 50052.5.

[1] California Constitution, Article, XIII, section 1.
[2] California Constitution, Article, XIII A, section 2; R&TC section 60 et. seq.
[3] R&TC section 110(a).
[4] R&TC section 402.1(a).

- The contract must include a deed of trust on the property in favor of the nonprofit corporation to ensure compliance with the terms of the program, which has no value unless the owner fails to comply with the covenants and restrictions of the terms of the home sale.
- The local housing authority or an equivalent agency, or, if none exists, the city attorney or county counsel, has made a finding that the long-term deed restrictions in the contract serve a public purpose.
- The contract is recorded and provided to the Assessor.

Typically, a nonprofit organization using this type of contractual restriction also uses a silent second mortgage that restricts its homebuyers' ability to sell, lease, refinance, encumber, or mortgage the home. The contract is recorded with these restrictions and could be legally enforced should the homebuyer violate contract terms.

Proposed Law: This new law provides that for real property subject to a contract that satisfies all of the above-described requirements, there shall be a rebuttable presumption that the value of the real property at the time of purchase will exclude the value of the deed of trust referenced in clause (iii) of R&TC section 402.1(a)(10)(A). This clause is one component of the contractual affordability requirements (or enforceable restrictions) enumerated in R&TC section 402.1, often referred to as the Habitat model.

In General: Purchase Price. Existing property tax law requires the Assessor to reassess property to its fair market value when sold. The law provides that the property's "purchase price" is rebuttably presumed to be its "fair market value."[5] It also provides that "purchase price" means the *total consideration* provided by the purchaser or on the purchaser's behalf, valued in money, whether paid in money or otherwise.

Relevant to this bill, some government and nonprofit organizations' affordable housing programs use silent second mortgages (silent second) to assist low-income home buyers to purchase homes they could not otherwise afford. Typically, the silent second has no, or a deferred, repayment obligation.

When a home is purchased through an affordable housing program, "purchase price" may include more than the nominal sales price when the silent second is considered since "total consideration" is the measure of value for tax purposes.

Enforceable Restrictions. When determining a property's fair market value, R&TC section 110(a) requires the Assessor to consider the effect of restrictions on a property's use, such as zoning or environmental constraints, that can be legally enforced. Similarly, when determining the value of land, R&TC section 402.1(a) requires the Assessor to consider the effect of governmentally imposed restrictions on land use. Except for four specified exceptions,[6] the Assessor may not consider a nonprofit-corporation imposed restriction that negatively impacts its value.

Relevant to this bill, a nonprofit organization typically requires home buyers to enter into a contract that limits the homeowner's ability to sell, lease, refinance, encumber, or mortgage the home. The contract is recorded and could be legally enforced should the home buyer violate the contract's terms.

[5] R&TC section 110(b).
[6] R&TC section 402.1(a)(8)–(11).
[7] Property Tax Annotation 535.0006.

Determining Fair Market Value—Silent Second Mortgages. Property tax law does not address how to determine value when the total consideration for a property includes a silent second mortgage. Relevant to this bill, in the case of silent seconds that involve a governmental agency, the BOE advises Assessors[7] to estimate the property's purchase price by adding the sum of:

- the down payment,
- the first mortgage face amount, and
- the Assessor's estimate of the *present economic* value of the silent second reflecting all the agreement's terms and conditions. Such terms include whether the silent second will have to be repaid, repaid at the time of sale, or assumed by the next buyer.

After determining the purchase price, the Assessor is required to consider the effect on the value of any imposed restrictions on use. Specifically, the Assessor exercises their judgment under R&TC section 402.1 to determine whether the property's value is equal to, more, or less than the purchase price as a result of the enforceable restrictions on the use of the land.

Previous Legislation: In 2007, Assembly Bill (AB 793) (Strickland) related to a home purchased under an affordable housing program, would have:

- Excluded from the calculation of purchase price is the amount of any "silent second mortgage" if payment is not required for at least 30 years.
- Expressly provided that resale price restrictions on homes purchased through a program operated by a governmental agency must be considered when determining property value.
- Allowed resale price restrictions on homes purchased through a program operated by a nonprofit organization to be treated as an enforceable restriction that must be considered when determining property value.

The Senate Appropriations Committee held AB 793.

In 2013, Senate Bill (SB 499) (Wyland) was held in the Senate Appropriations Committee. The bill's sponsor, Habitat for Humanity, surveyed 22 counties in 2007 regarding how affordable homes built, financed, and sold by Habitat for Humanity affiliates were assessed after the sale. The assessment treatment varied. In some areas, the assessed value was based on whether or not the construction involved city or county funds, and in others, the value was based on verbal agreements with the Assessor.

In 2016, AB 668 (Gomez) was signed into law to require County Assessors to consider a recorded contract with a tax-exempt non-profit corporation when valuing property for property tax assessment purposes. AB 668 attempted to address valuation issues by directing Assessors to consider the impact of restrictions in affordable housing contracts on the overall assessable value.

Commentary:

1. **Sponsor—Habitat for Humanity (Habitat)**. Habitat states that AB 1868 simply codifies a practice already in place by the majority of County Assessors. It further states that new home sales or new home assessments in California meeting the criteria are approximately 100 properties per year. For non-Habitat new affordable home sales, the organization stated that sales are insignificant. This is based on the premise that there are very few affordable home developers compared to the total properties sold and assessed for each county. In conclusion, Habitat states that the tax or revenue impact will be minimal.

2. **Silent Second Mortgages: Valuation**. Some argue that a home's "purchase price" should not take into account the silent second mortgage. However, because the law requires *total consideration*, whether paid in money or otherwise, to be the assessment basis, it must be considered. A mitigating factor is that the face amount of the silent second, which can be substantial, will be discounted. Once the Assessor analyzes the silent second terms, it is possible that no amount, or a negligible sum, is added to the nominal sales price to calculate the statutory "purchase price" definition.

3. **The BOE's current recommended assessment approach**.

First, the purchase price of the home must be determined by adding the sum of:

a. the down payment,
b. the face amount of the first mortgage, and
c. the *present economic value* of the silent second reflecting all the terms and conditions of the agreements. Such terms would include whether, if at all, the silent second will have to be repaid at the time of sale or must be assumed by the next buyer.

In practical application, the discount on a silent second, which may have a delayed payment as long as 30, 45, or an indefinite number of years, may be a negligible sum.

The second step in the process is for the Assessor to consider the effect upon value, if any, of enforceable restrictions on land use required under R&TC section 402.1.

This approach is administratively complex. The Assessor must calculate a discount period and discount rate appropriate for the terms of the silent second mortgage. After determining the purchase price, the Assessor is required to consider the effect of the government-imposed restrictions on value. Specifically, the Assessor must exercise judgment under the R&TC section 402.1 requirement to determine whether the value of the property is equal to, or more or less than, the purchase price due to the use restriction.

4. **Silent Seconds and Recorded Contracts Vary**. In past years, when the BOE reviewed this issue, it did not find a standard or pro forma "silent second." The specific terms and conditions of each silent second must be analyzed separately and independently to determine their respective property tax implications. Some silent seconds may only take effect if the purchaser violates the original agreement and are forgiven if the agreement is fulfilled. Such silent seconds operate primarily as an enforcement mechanism to encourage compliance with the enforceable restrictions. In these cases, the BOE generally does not regard the silent second as part of the purchase price.

In other cases, while the silent second may or may not have some enforcement goal, it remains payable regardless of the enforceable government restrictions. In such cases, where the purchaser has unconditionally committed to pay the silent second under its terms and conditions, the Assessor must consider the silent second in the determination of the purchase price. Moreover, regulatory agreements related to the resale of affordable housing units also vary. Therefore, to determine whether enforceable restrictions have an effect on value, the Assessor must review and analyze the agreement's specific restrictions and conditions, as well as take into consideration the local marketplace for homes subject to similar or identical enforceable restrictions.

Amending the bill to rebuttably exclude the deed of trust seems to address any potential ambiguity in the valuation process in the prior version of the bill, which limited the value to the first mortgage and any down payment.

Costs: The BOE will incur costs of approximately $3,086 for fiscal year 2024-25, and $187 for the years thereafter.

Revenue Impact: It is not possible to determine the revenue impact of this new law with any degree of certainty due to the number of variables involved. The estimated 100 homes sold annually by Habitat for Humanity affiliates are sold across the state, where individual county approaches and practices vary. To determine an accurate revenue impact, BOE staff would need to know the fair market value of a property and the value of the deed of trust provisions for each contract, which vary from property to property. Therefore, it is difficult to estimate an accurate revenue impact.

Based on the factors above, staff estimates property tax revenue loss from application of a more uniform deed restriction/valuation standard than is currently utilized under existing law. While this revenue loss could potentially exceed the high thousands of dollars per home built each year, the impact would be limited to scenarios where assessment valuation practices differ from the approach specified in this bill.

Assembly Bill 1879 (Gipson)—Chapter 217

Property Taxation: Filing

Effective January 1, 2025

Amends section 441 of and adds section 168.1 to the Revenue and Taxation Code

Summary: This new law requires acceptance of an electronic signature for specified property tax documents between the public and County Assessors on forms approved by the State Board of Equalization (BOE) when authorized by an Assessor and makes corresponding updates in the Revenue and Taxation Code (R&TC).

Fiscal Impact Summary: Moderate administrative costs of approximately $17,500 in fiscal year 2024/25 and $10,000 in fiscal year 2025/26 for the BOE to develop new and/or amend existing e-compliant forms and approve the electronic signature authentication process for County Assessors. Potential cost savings at the county level for future processing efficiencies.

Existing Law: In General:

1. In 1995, Government Code (GC) section 16.5 instituted authorization to accept electronic signatures in transactions with governmental entities. In 1999, the Uniform Electronic Transactions Act (UETA) was implemented and provided that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form and defines an electronic signature. (Civil Code, section 1633.1 et seq.) In 2016, the Legislature clarified how these provisions worked together, clarifying that a digital signature, as defined by GC 16.5, may be used to satisfy the requirements of an electronic signature under the UETA and vice versa.
2. The UETA defines "electronic signature" as an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. (Civ. Code, section 1633.2, subd. [h].)
3. GC section 16.5, subdivision (d) provides that "digital signature" means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature. Further, a "digital signature" is considered a type of "electronic signature," as defined by the UETA. (Civ. Code, section 1633.2, subd. [h].)
4. Allows a digital signature to be used in a written communication with a public entity but provides that use or acceptance of a digital signature is at the option of the parties. (GC section 16.5, subd. [b].)

Digital and Electronic Signatures—Existing Property Tax Law:

Existing law requires each person owning certain taxable personal property, having an aggregate cost of $100,000, or more, or upon the request of a County Assessor, to annually file a signed property statement under the penalty of perjury with the Assessor. (R&TC, section 441.)

1. Existing law permits a County Assessor to accept property statements filed using electronic media. In lieu of the required signature and the declaration under penalty of perjury, as described below, existing law requires property statements filed using electronic media to be authenticated pursuant to methods specified by the Assessor and approved by the BOE. (R&TC, section 441, subd. [k].)
2. Existing law permits a tax collector to execute a property tax document with a facsimile signature in lieu of a manual signature if the manual signature is filed with the Secretary of State and is certified under oath by the tax collector. (R&TC, section 168.)

Proposed Law: This new law will authorize the use of an electronic signature in lieu of a manual, facsimile, or other signature to execute a document required to be executed by a taxpayer for purposes of any tax imposed pursuant to specified property tax laws if certain requirements are met.

The new law establishes that any property tax document that requires the signature of the taxpayer may be electronically signed by the taxpayer—not just via a digital signature authorized by Government Code section 16.5 and subject to regulations adopted by the Secretary of State.

The new law clarifies that an electronic signature (the broader category that also encompasses digital signatures) can be used to execute property tax documents if it is authenticated in a manner specified by the Assessor and approved by the BOE. By electronically signing in an approved manner, the taxpayer would certify under penalty of perjury that all the information, including accompanying statements or materials, in the document, is true, correct, and complete to the best of the taxpayer's knowledge.

The new law also clarifies that a County Assessor's office is only required to accept an authenticated electronic signature if the Assessor authorizes the submission of any BOE-prescribed form using electronic media. If the Assessor does not accept electronic submission of any BOE-prescribed forms, the Assessor is not mandated to accept e-signature submissions under this bill.

Specifically, this bill:

1. Adds R&TC section 168.1 to authorize every County Assessor to accept an electronic signature on any required taxpayer document pursuant to the bill's provisions if the Assessor authorizes the submission of a BOE-prescribed form by the use of electronic media and would require every county to adopt any necessary ordinances, resolutions, or other procedures to effectuate the bill's provisions. Provides that, upon compliance with the bill's provisions, an electronic signature shall have the same legal effect as a manual, facsimile, or other signature of the taxpayer.
2. Establishes in R&TC section 168.1 that any document required to be executed by a taxpayer for purposes of any tax imposed by Division 1 of the R&TC (Property Taxation) may be executed by electronic signature if the following requirements are met:
    a) The electronic signature is accompanied by a form in the signature block that states that the taxpayer certifies or declares under penalty of perjury that all information is true, correct, and complete to the best of the taxpayer's knowledge.
    b) The electronic signature is authenticated in a manner that is approved by the BOE.
3. Clarifies in R&TC section 168.1 that "electronic signature" has the same meaning as that term defined in subdivision (h) of section 1633.2 of the Civil Code.
4. Amends R&TC section 441 to allow all County Assessors to accept the filing of any form approved by the BOE electronically and requires the form to be authenticated pursuant to methods specified by the Assessor and approved by the BOE.

Background:

- In 1995, the Legislature adopted its first digital signature statute to allow public entities to engage in electronic commerce (AB 1577 (Bowen), ch. 594, Stats. 1995). In 1999, the Legislature adopted the Uniform Electronic Transaction Act, which authorized electronic signatures for contracting purposes. (SB 820 (Sher), ch. 428, Stats. 1999.)
- In 2004, to further promote an efficient, cost-effective means of maintaining and transmitting records by public agencies, the Legislature enacted the Electronic Recording Delivery Act of 2004 to regulate the electronic delivery, recording, and return of instruments affecting rights, title, or interest in real property. (AB 578 (Leno), ch. 621, Stats. of 2004.)
- Many other e-signature statutory updates have since followed.

In General: Government Code section 16.5 authorizes the use of a digital signature in communication with public agencies. Any digital signature meeting specified requirements has the same force and effect as a manual signature in written communications with a public entity. The Secretary of State was required to adopt regulations for confirming authenticity and verification. The provisions are meant to ensure that the signature is unique to the person using it, capable of verification, and under the sole control of the person using it. (California Code Regs. Title. 2, section 22003.)

Uniform Electronic Transactions Act (UETA): Four years later, the Legislature passed the more comprehensive UETA, which established uniform standards for conducting electronic transactions in California. (SB 820 (Sher), 1999.) UETA set out a voluntary system of rules and procedures for the sending and receiving of electronic records and signatures, the formation of contracts using electronic records, the making and retention of electronic records and signatures, and the procedures governing changes and errors in electronically transmitted records. It also established the validity of transactions formed, transmitted, and recorded electronically, and established the admissibility of electronic records in a legal proceeding.

In 2017, the Legislature clarified that a "digital signature" authorized by Government Code section 16.5 and subject to regulations adopted by the Secretary of State is one type of "electronic signature" that a public agency may choose to accept under the Uniform Electronic Transactions Act. (AB 2296 (Low), ch. 144, Stats. 2016.)

Commentary: This measure would further modernize the state's tax transaction system, allowing taxpayers to safely execute tax forms via electronic signature, consistent with forms and procedures developed and authorized by the BOE and County Assessors.

Under the current version of the bill, some counties will likely lose the "hybrid" option of offering and accepting BOE-prescribed forms electronically if the Assessor continues to require a wet signature. This could potentially result in diminished options and services for taxpayers.

Stated differently, while Assessors may not have to accept an electronic signature or even remove a BOE-prescribed form from their website if they do not accept an electronic signature on it, the Assessor will not be able to accept the form electronically if the Assessor does not also accept an electronic signature.

Costs: Estimated costs to the BOE to amend and approve the use of new forms, and approve the electronic signature authentication process is $17,500 in FY 2024-25 and $10,000 in FY 2025-26. Potential cost savings at the county level for future processing efficiencies.

Revenue Impact: No impact.

Qualifying Remark: The California Assessors' Association (CAA), representing the 58 elected County Assessors in the state, is sponsoring this bill to expand the ability for an Assessor to offer electronic submission on all BOE-prescribed forms and reduce the need to track both paper and electronic files. Recognizing that not every County Assessor can accept electronic forms, the bill continues to provide every Assessor the option of offering and accepting electronic forms.

Assembly Bill 2353 (Ward)—Chapter 566

Property Taxation: Welfare Exemption: Delinquent Payments: Interest and Penalties

Effective January 1, 2025

Adds Revenue and Taxation Code section 4985.05

Summary: This new law will allow an affordable housing developer to withhold property tax otherwise due to a county tax collector once a "welfare exemption" application has been submitted to qualify the property for a low-income housing welfare exemption.

Revenue Impact: Unknown potential loss of revenue, as property taxes currently collected at the time of application, are ultimately refunded later in the approval process under current law. The corresponding tax revenue would ultimately be due if the welfare exemption application is denied.

Existing Law: Under the California Constitution, all property is taxable unless otherwise provided for by the State Constitution or the laws of the United States.[8] The Legislature may exempt from property taxation in whole or in part property used exclusively for religious, hospital, scientific, or charitable purposes and owned or held in trust by nonprofit corporations or other entities if specific criteria are met.[9]

This exemption is known as the "welfare exemption" and is implemented according to Revenue and Taxation Code (R&TC) section 214. R&TC section 214 generally exempts from taxation, subject to certain conditions and qualifications, property (1) owned by nonprofit organizations organized and operated for charitable purposes and (2) used exclusively for those purposes.

R&TC section 214(g)(1) generally provides that property used exclusively for low-income rental housing owned and operated by nonprofit organizations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, shall be deemed within the exemption authorized by R&TC section 214.

Housing Welfare Exemption. Property tax administrators have historically taken a narrow view of the exemption. They have viewed most housing as non-exempt because the property is used primarily for private residential purposes rather than exempt purposes and is not used exclusively for exempt purposes as required by R&TC section 214.[10]

However, the courts have taken a broader view, consistent with the Supreme Court's directive that statutory and constitutional provisions granting exemptions are to be construed strictly but reasonably.[11]

[8] California Constitution, Article XIII, section 1.
[9] California Constitution, Article XIII, section 4(b).
[10] Assessors' Handbook section 267, *Welfare, Church, and Religious Exemptions*, p. 62.
[11] *Ibid.*

In 1999, the BOE adopted Property Tax Rule (Rule) 137, *Application of the Welfare Exemption to Property Used For Housing*, effective December 31, 1999. Rule 137 clarifies that the welfare exemption applies to housing and related facilities owned and operated by qualified nonprofit organizations. It establishes a single uniform statewide standard for determining qualification for the welfare exemption as it applies to such properties.[12]

Existing law defines "lower income households" by reference to Health and Safety Code (H&SC) section 50079.5. which defines it as persons and families whose income does not exceed the qualifying limits under section 8 of the United States Housing Act of 1937.

Lastly, Property Tax Rule 140 specifies, in significant detail, numerous definitions and requirements for a full-or-partial welfare exemption for low-income housing properties.

Proposed Law: This new law adds R&TC section 4985.1 to provide that a taxpayer is not liable for interest or penalties imposed by a county tax collector, nor shall a county tax collector attempt to collect delinquent property taxes levied on a property, if:

1. The taxpayer has submitted an application to exempt the property from property taxes under the existing property tax exemption provisions for deed-restricted affordable lower-income rental housing (subsection (g) of R&TC section 214), and provided the application for exemption includes all of the following:
    - An organizational clearance certificate (OCC) or supplemental clearance certificate (SCC) from the State Board of Equalization (BOE).
    - A description of the property that includes the total number of residential units, the number of residential units eligible for exemption, the total square footage of the improvements, and the square footage of improvements not eligible for exemption.
    - An enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document consistent with the requirements of the property tax welfare exemption under R&TC 214.

Exclusions: The new law provides that the process created by this statutory change **does not apply** to either of the following:

a) The prorated portion of any delinquent installments of property taxes that are related to improvements ineligible for exemption or to residential units not restricted as affordable to lower-income households pursuant to the agreement, restriction, or document; or

b) Any late or delinquent installments related to property which the assessor deems ineligible for exemption after reviewing the application for property tax welfare exemption.

Acknowledgment: This new law requires the county assessor to acknowledge to the taxpayer and the county tax collector receipt of the application for exemption within 60 days of the taxpayer's submittal of the application.

The new law also provides that any routine communication sent to the taxpayer from the tax collector shall not constitute a collection action under this bill.

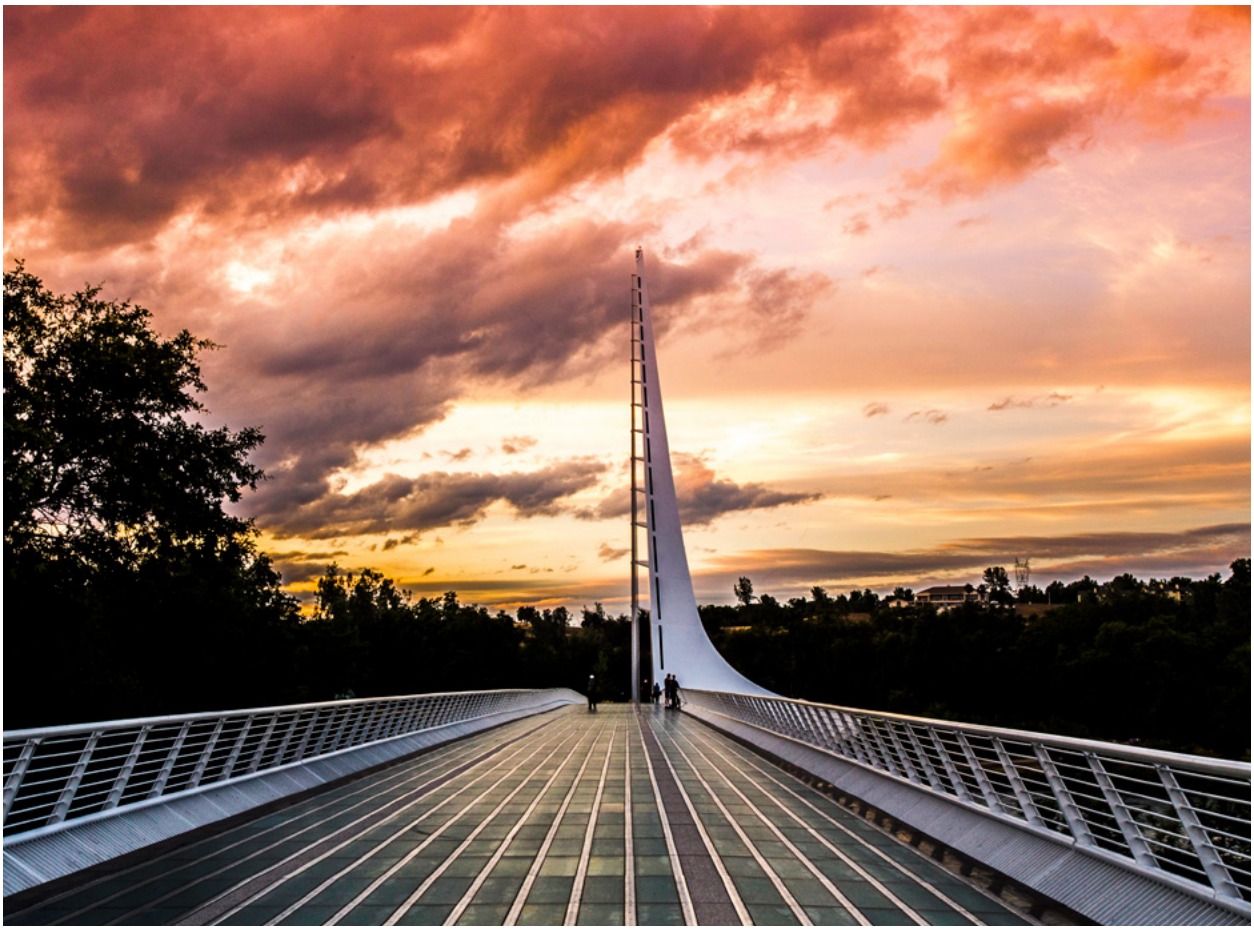
[12] *Id*. at p. 65.

Fiscal Impact Summary: None.

Commentary: According to the sponsor of this bill, the California Housing Partnership, "even though most affordable housing developers have been approved for exemptions numerous times and the use of a particular site as affordable housing and the percentage of affordable units on that site are set in recorded affordability restrictions, developers must pay the taxes up front and seek reimbursement after both the State Board of Equalization (BOE) and the county assessor approve a development's exemption. As a result, developers float hundreds of thousands of dollars in tax payments for as many as three years, only to get the money back (albeit without interest) once their application is approved. The developers pay interest to borrow this money, which further increases development costs."

Qualifying Remark: This bill impacts assessors by adding a 60-day period to acknowledge receipt of an exemption claim. Such a requirement might be better placed in R&TC section 254.5, which covers the processes for filing a welfare exemption claim with the County Assessor, instead of a section within Chapter 4, regarding Cancellations.

The BOE is not directly impacted by this proposal as currently drafted but would be involved if required to review and approve an OCC in a specified timeframe (e.g., 60 days).



Assembly Bill 2897 (Connolly)—Chapter 580

Property Tax: Welfare Exemption: Community Land Trusts

Effective January 1, 2025

Amends Civil Code section 2924p, Government Code section 64702, Health and Safety Code sections 50650.5, 50720.2, and 50720.4, and Revenue and Taxation Code sections 214 and 402.1

Summary: This new law amends Revenue and Taxation Code (R&TC) section 402.1 to allow a wholly owned subsidiary of a Community Land Trust (CLT) to qualify as a CLT if it is solely directed and managed by the CLT. Allows a CLT to sell a dwelling or unit to a qualified owner, but not the deed-restricted land underneath it, if the CLT subjects the property to a revised 99-year lease restriction.

This bill also updates a number of cross-references to CLTs in code sections unrelated to property tax governance.

The April 1 amendments reinstated the existing requirement that one of a number of specified public agency officials find that the affordability restrictions in the contract serve the public interest to create and preserve the affordability of residential housing for persons and families of low or moderate income – prior to the contract being recorded and provided to a county assessor. (R&TC section 402.1.)

Fiscal Impact Summary: No revenue impact anticipated.

In General: Under section 4(b) of Article XIII of the California Constitution, the Legislature is authorized to exempt from taxation, in whole or in part:

> Property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities (1) that are organized and operated for those purposes, (2) that are nonprofit, and (3) no part of whose net earnings inures to the benefit of any private shareholder or individual.

In exercising the above constitutional authorization, the Legislature enacted R&TC section 214, reiterating the constitutional authorization, outlining numerous conditions and qualifications for receiving the exemption, and adding scientific as the fourth qualifying purpose. R&TC section 214 provides that property used exclusively for charitable purposes owned and operated by entities organized and operated for charitable purposes is exempt from taxation if the entities are not owned and operated for profit, and the property is used for the actual operation of the exempt activity.

Charitable Purposes. An organization's primary purpose must be either religious, hospital, scientific, or charitable. Whether its operations are for one of these purposes is determined by its activities. The State Supreme Court has broadly construed the charitable purpose aspect of the welfare exemption to include a wide range of activities that benefit the general public.[13] The term "charitable" is not confined to the relief of poverty but includes all kinds of humanitarian activities, rendered at cost or less, the object of which is the care of the physical and mental well-being of the recipients.

Exclusive Use. The R&TC does not specifically define the term used exclusively; however, the courts have done so in a series of decisions. The California Supreme Court has stated that the phrase "exclusively used" may not be given a literal interpretation to mean that the property exempted must be used solely for the purposes communicated to the total exclusion of any other use. The Supreme Court held that used exclusively for exempt purposes includes any property which is used exclusively for any activity, which is incidental to and reasonably necessary for the accomplishment of the exempt purpose.[14] Courts have applied this precedent to mean that a qualified organization's primary use of its property must be for exempt purposes, and any other uses of property must be related to and reasonably necessary for the accomplishment of the exempt purpose.[15]

Housing Welfare Exemption. Historically, property tax administrators took a narrow view of whether the welfare exemption extends to property used for housing and related facilities provided by religious, hospital, scientific, and charitable organizations. Previously, they viewed most housing as non-exempt because the property was used primarily for private residential purposes rather than exempt purposes and was not used exclusively for exempt purposes as required by prior interpretations of R&TC section 214.[16]

However, the courts have taken a broader view, consistent with the Supreme Court's directive that statutory and constitutional provisions granting exemptions are to be construed strictly but reasonably.[17] As a result, the courts have exempted properties used for a wide range of housing as property used exclusively for exempt [religious, charitable, or hospital] purposes within the meaning of R&TC section 214(a).

The State Board of Equalization (BOE) has worked to establish clearer exemption qualification standards. In 1999, the BOE adopted Property Tax Rule (Rule) 137, *Application of the Welfare Exemption to Property Used For Housing*. Rule 137 clarifies that the welfare exemption applies to housing and related facilities owned and operated by qualified nonprofit organizations. It establishes a single uniform statewide standard for determining qualification for the welfare exemption as it applies to such properties.[18]

Subdivision (g) of section 214 extends the welfare exemption to property owned and operated by qualifying organizations and used exclusively for rental housing, which is occupied by lower-income households. "Lower income households" are defined by reference to Health and Safety Code (H&SC) section 50079.5, which provides persons and families whose income does not exceed the qualifying limits under section 8 of the United States Housing Act of 1937. In 2006, the BOE adopted Property Tax Rule 140, which interprets R&TC section 214 (g) and specifies numerous definitions and requirements for a full-or-partial welfare exemption for low-income housing properties; Rule 140 was amended in 2019.

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[13] *Stockton Civic Theatre v. Board of Supervisors* (1967) 66 Cal.2d. 13.
[14] *Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 736.
[15] *Honeywell Information Systems, Inc. v. County of Sonoma* (1974) 44 Cal.App.3d 23; *YMCA v. County of Los Angeles* (1950) 35 Cal.2d 760; *St. Germain Foundation v. County of Siskiyou* (1963) 212 Cal.App.2d 911; *Greek Theatre Association v. County of Los Angeles* (1978) 76 Cal.App.3d 768.
[16] Assessors' Handbook section 267, *Welfare, Church, and Religious Exemptions*, p. 62.
[17] *Ibid*; *Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 735.
[18] *Id*. at p. 65.

CLTs. A CLT is a land ownership model that allows moderate and low-income homeownership opportunities. It is based on the land owned by a nonprofit entity that then sells the dwelling unit(s) to those who qualify as low-income while maintaining ownership of the land the dwelling is built upon.

Existing Law: Under the California Constitution, all property is taxable unless otherwise provided for by the State Constitution or the laws of the United States.[19] The Legislature may exempt from property taxation in whole or in part property used exclusively for religious, hospital, scientific, or charitable purposes and owned or held in trust by nonprofit corporations or other entities if specific criteria are met.[20]

This exemption is known as the "welfare exemption" and is implemented according to R&TC section 214. R&TC section 214 generally exempts from taxation, subject to certain conditions and qualifications, property (1) owned by nonprofit organizations organized and operated for charitable purposes and (2) used exclusively for those purposes.

R&TC section 214(g)(1) generally provides that property used exclusively for low-income rental housing owned and operated by nonprofit organizations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, shall be deemed within the exemption authorized by R&TC section 214.

The State Board of Equalization (BOE) and 58 County Assessors jointly administer the welfare exemption. The BOE is responsible for determining whether an organization is organized and operating for exempt purposes, which qualifies the organization for either an Organizational Clearance Certificate (OCC) or a Supplemental Clearance Certificate (SCC). The County Assessor is responsible for determining whether using a qualifying organization's property is eligible for the welfare exemption. The County Assessor shall not grant the welfare exemption for an organization's property unless the organization holds either a valid OCC or SCC issued by the BOE. However, the County Assessor may deny a welfare exemption claim based on non-qualifying use of the property, notwithstanding that the BOE has issued the organization an OCC or SCC. The BOE tracks eligible nonprofit organizations and limited liability companies that hold valid OCCs and SCCs and monitors those organizations for continued eligibility.

Once the BOE issues an OCC or an SCC to a qualified organization, the organization must file a BOE-267, *Claim for the Welfare Exemption* with the County Assessor where the property is located. The County Assessor is responsible for evaluating the application, determining whether the use of the property meets the statutory requirements for receiving the welfare exemption, and ultimately granting or denying the exemption to claimants.

Under existing property tax law, properties that meet these requirements and are used exclusively for rental housing, including related facilities, are entitled to a partial exemption, equal to that percentage of the value of the property that is equal to the percentage that the number of units serving lower income households represents of the total number of residential units, in any year that specific criteria apply. These criteria include that the property be subject to a legal restriction that provides that units designated for use by lower-income households are continuously available to or occupied by lower-income households at rents not exceeding specified limits.[21]

In 2019, the Legislature added R&TC section 214.18 into law, which stated that property owned by a CLT that qualifies for a welfare exemption under R&TC section 214 is also within the exemption provided by sections 4 and 5 of Article XIII of the California Constitution as long as several conditions were met and repeals the section on January 1, 2025.[22]

[19] California Constitution, Article XIII, section 1.
[20] California Constitution, Article XIII, section 4(b).
[21] R&TC, section 214(g)(1).
[22] SB 196, Chapter 669, Stats. 2019.

SB 196 also required the BOE to annually collect data from County Assessors relating to CLTs and the number of units created by CLTs under the welfare exemption authorized under R&TC section 214.18.

In 2020, the Legislature clarified the requirements for CLTs to claim the welfare exemption and made property owned by a CLT eligible for the welfare exemption before beginning construction. Additionally, these clarifications prevented County Assessors from denying the welfare exemption to CLTs who were in the process of constructing affordable housing but did not have any units complete. However, these clarifications made CLTs liable for property tax for the years the CLT received the exemption if the construction was not completed within a certain timeframe.[23]

On December 1, 2021, the BOE issued a Letter To Assessors (LTA) providing information and guidance on treating CLT housing considering these legislative changes.[24]

R&TC section 402.1 requires CLTs to maintain 99-year renewable leases for dwellings sold to qualified owners situated on land owned by the nonprofit.

Proposed Law: Expands the Definition of CLT to Include Wholly Owned Subsidiaries. This new law amends R&TC sections 214 and 402.1 to expand the definition of a CLT to include a wholly owned subsidiary of the CLT that is solely directed and managed by the CLT.

This new law also adds a new subsection to R&TC section 402.1[25] to address dwellings or units that are part of a condominium, cooperative, or other common interest development under which the land is owned by a homeowners' association or person other than the CLT. In such cases, the condominium unit or interest owned by the CLT is authorized to be sold to qualified occupants, as long as an affordability restriction of at least 99 years is in place.

Consistency in Cross References in Existing Law. This new law updates cross references to CLTs in the Civil Code (section 2924) and the Health and Safety Code (sections 50650.5, 50720.2, and 50720.4) to provide a consistent definition of a CLT and proper cross references to the R&TC.

Costs: Initial implementation costs of approximately $3,617 and minimal ongoing costs going forward.

Revenue Impact: No impact anticipated. Staff views AB 2897 as a continuation of existing law regarding what is required of a CLT for purposes of property tax assessment, and adds updated cross references in various statutes for the definition of a CLT.

[23] SB 1473, Chapter 371, Stats. 2020; R&TC section 214.18.
[24] Letter To Assessors No. 2021/052, California State Board of Equalization, December 1, 2021.
[25] R&TC section 402.1(a)(11)(C)(ii)(II)(ib).

Senate Bill 1527 (Committee on Revenue and Taxation)—Chapter 498

Property Taxation: Exemption: Low-Value Properties and Tribal Housing

Effective September 22, 2024

Amends Revenue and Taxation Code sections 155.20 and 237

Summary: This new law amends Revenue and Taxation Code (R&TC) section 155.20 to extend the $50,000 "low-value" exemption ordinance[26] limit that a county board of supervisors may apply to any taxable possessory interest.

Existing Law: Section 1(a) of Article XIII of the California Constitution provides that all property is taxable unless otherwise provided by the Constitution or the laws of the United States. Section 7 of Article XIII provides that the Legislature may authorize a county board of supervisors to exempt real property having a full value so low that, if not exempt, the total taxes and applicable subventions on the property would amount to less than the cost of assessing and collecting them.

R&TC section 155.20 authorizes a county board of supervisors to exempt from property tax real property with a factored base year value and personal property with a full value so low that, if not exempt, "the total taxes, special assessments, and applicable subventions on the property would amount to less than the cost of assessing and collecting them." The exemption permitted under this section of law is commonly referred to as the "low-value" exemption and is enacted by local ordinance.

The amount of the low-value exemption may not exceed $10,000 except that, through lien date 2024, the exemption is increased to $50,000 in the case of a possessory interest.

Code Sections to Amend: Amend R&TC section 155.20.

Identification of Problem: The $50,000 low-value exemption for all possessory interests is set to sunset on January 1, 2025.

Proposed Solution: This proposal will allow the $50,000 low-value exemption for all possessory interests to continue for another five years.

[26] The term "ordinance" is used in this analysis for simplicity to refer to any action by a county board of supervisors that is effective to implement the low-value exemption pursuant to Revenue and Taxation Code section 155.20.

Justification:

a) The $50,000 low-value threshold will revert back to applying only to a possessory interest for a temporary and transitory use in a publicly owned fairground, fairground facility, convention facility, or cultural facility.

b) The BOE is an advisory agency on property tax assessment matters and has oversight over County Assessor policies and procedures. For property tax purposes, possessory interests are valued by County Assessors.

c) Effective July 12, 2019, Assembly Bill 608 (Stats. 2019, ch. 92) amended section 155.20 to extend the $50,000 threshold for temporary use in a publicly owned fairground, fairground facility, convention facility, or cultural facility to all possessory interests through the 2024 lien date.

Program Background/Legislative History

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

Section 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.

Low-Value Exemption. Section 7 of Article XIII provides that the Legislature may authorize a county board of supervisors to exempt real property having a full value so low that, if not exempt, the total taxes and applicable subventions on the property would amount to less than the cost of assessing and collecting them.

The Legislature enacted section 155.20 to provide the necessary statutory implementation. Section 155.20 authorizes a county board of supervisors to exempt from property tax real property with a factored base year value and personal property with a full value so low that, if not exempt, "the total taxes, special assessments, and applicable subventions on the property would amount to less than the cost of assessing and collecting them." Prior to July 12, 2019, the amount of the low-value exemption could not exceed $10,000 except that the limit was increased to $50,000 in the case of a possessory interest for a temporary and transitory use in a publicly owned fairground, fairground facility, convention facility, or cultural facility.

Effective July 12, 2019, Assembly Bill 608 (Stats. 2019, ch. 92) amended section 155.20 to extend the $50,000 threshold to all possessory interests through the 2024 lien date.

Arguments—Pro and Con:

Pros

- Continuing this $50,000 low-value threshold for all possessory interests will avoid wasteful and inefficient administrative costs, and save money for both government and small business owners.

Cons

- Allowing the $50,000 low-value threshold for all possessory interests to sunset will limit this threshold to a possessory interest for a temporary and transitory use in a publicly owned fairground, fairground facility, convention facility, or cultural facility.
- If the $50,000 threshold for all possessory interests sunsets, County Assessors may have to value and enroll possessory interests formerly exempt under the $50,000 threshold.
- If the $50,000 threshold for all possessory interests sunsets, those counties that have enacted the $50,000 threshold will have to amend their ordinances.

Probable Support and Opposition: Support—California Assessors' Association.

Other External Parties that may be Affected: None known.

Fiscal Impact (If known): None.

Senate Bill 1528 (Committee on Revenue and Taxation)—Chapter 499

California Department of Tax and Fee Administration—Omnibus Bill

Effective January 1, 2025

Amends sections 6486, 6487, 6487.05, 6487.06, 6487.1, 6487.2, 6487.3, 6488, 6515, 6539, 6566, 6597, 6701, 6829, 6964, 7671, 7675, 7675.1, 7676, 8174, 8781, 8782, 8782.1, 8783, 8805, 8829, 8853, 8855, 8951, 9184, 12951, 12977, 30206, 30207, 30207.1, 30208, 30225, 30243, 30244, 30263, 30265, 30384, 32202, 32271, 32272, 32272.1, 32273, 32291, 32306, 32312, 32387, 32432.5, 32452, 38416, 38417, 38418, 38419, 38425, 38434, 38447, 38501, 38624, 40005, 40076, 40077, 40078, 40079, 40085, 40097, 41075, 41076, 41077, 41078, 41084, 41091, 43007, 43155.01, 43201, 43201.01, 43202, 43203, 43204, 43307, 43351, 43484, 43507.5, 45007, 45201, 45202, 45203, 45307, 45352, 45752, 46009, 46202, 46203, 46204, 46205, 46255, 46302, 46357, 46544, 50106, 50113, 50113.1, 50113.2, 50120, 50120.2, 50150.5, 55061, 55062, 55063, 55064, 55087, 55102, 55262.5, 60311, 60315, 60316, 60317, 60340, and 60564 of, and adds sections 6471.6 and 60014 to, the Revenue and Taxation Code.

Summary: This statute updates the above-referenced Revenue and Taxation Code (R&TC) sections specific to the California Department of Tax and Fee Administration (CDTFA) and the State Board of Equalization (BOE) jurisdictional tax programs. The following sections impacted R&TC sections under BOE constitutional jurisdiction:

Item 1) Amends sections 32202 and 32452 of the R&TC to require electronic filing of supplemental reports, including schedules, required from alcoholic beverage licensees, common and private carriers, and other persons.

Item 2) Amends R&TC sections 12951 and 12977 to align the insurance tax program with other tax and fee programs administered by CDTFA on behalf of the BOE with respect to the 10 day public disclosure requirement for credits, cancellations, and refunds more than $50,000.

Item 3) Amends R&TC sections 32271, 32272, 32272.1, 32273, 32291, 32306, 32312, and 32432.5 to authorize electronic service of levies under the Alcoholic Beverage Tax (ABT) program, otherwise known as serving a Notice of Determination (NOD) or Notice of Jeopardy Determination (NOJD).

Item 1—Summary: Amend sections 32202 and 32452 of the R&TC to require electronic filing of supplemental reports, including schedules, required from alcoholic beverage licensees, common and private carriers, and other persons.

Existing Law: Section 32251 requires taxpayers selling beer or wine or distilled spirits in this state, on or before the 15th day of each month, to file a tax return for the preceding calendar month, using electronic media, showing the amount of beer or wine or distilled spirits sold in this state, the amount of tax for the period covered by the return, and any other information as the Board deems necessary.

Section 32452 states that in addition to any other reports required for the administration of the Alcoholic Beverage Tax (ABT), the Board may, by rule and otherwise, require additional, other, or supplemental reports from alcoholic beverage licensees, common and private carriers, and other persons and prescribe the form, including verification, of the information to be given on, and the times for filing of, such additional, other, or supplemental reports. The failure or refusal of any person to render the reports required under this section is a misdemeanor.

In 2022, the legislature passed SB 518 (Laird), which in part required all sellers of beer or wine, or distilled spirits to file tax returns and related schedules relating to the calculation of taxes due, electronically. However, the proposal did not require supplemental reports and informational schedules required for these same returns to also be filed electronically.

Code Sections to Amend: R&TC sections 32202 and 32452.

Identification of Problem: The existing law requiring electronic filing applies only to the tax returns used to report taxes due and does not apply to the required supplemental reports and schedules attached to the returns containing other pertinent information and reports used to ensure compliance and accurate reporting.

The amendments proposed to R&TC 32452 include cleanup language to mandate that supplemental reports must also be filed electronically and will include a "schedule" as a type of supplemental report. The amendments proposed to R&TC 32202 are clean-up language to include the requirement for common carriers or persons licensed to sell distilled spirits on board such boats, trains, and airplanes, to report their sales of distilled spirits in this state using electronic media.

Proposed Solution: Amend R&TC section 32452 to include "schedules" as an additional form of a report and require alcoholic beverage licensees to use electronic filing for all informational reports and schedules; and amend R&TC section 32202 to clarify the requirement to use electronic filing of tax returns for common carriers or persons licensed to sell distilled spirits on board such boats, trains, and airplanes.

Justification: Without legislative action, there would be no conformity for the method of filing required tax returns and the required supplemental reports and schedules by ABT accounts. Additionally, the information contained in the reports and schedules could be delayed leading to inefficiencies in the administration of the ABT Program.

Program Background/Legislative History: The Alcoholic Beverage Tax is a per-gallon excise tax collected on the sale, distribution, or importation of alcoholic beverages in California. Revenues from the tax are deposited into the Alcohol Beverage Control Fund and are withdrawn for use by the State's General Fund or used to pay refunds under this program.

As part of an interagency agreement, the California Department of Tax and Fee Administration (CDTFA) collects the tax and administers the program in cooperation with the State Board of Equalization (BOE). The BOE hears all appeals for claims for refund or petition for redetermination denials.

Article 20, section 22 of the California Constitution requires the BOE to administer the ABT. Through an Interagency Agreement (IAA), the California Department of Tax and Fee Administration (CDTFA) collects the tax and administers the ABT program in cooperation and oversight by the BOE.

Arguments—Pro and Con:

Pros

- Efficient program administration so the tax return and informational schedules are received as one unit.
- Taxpayers must electronically file tax returns for ABT, Sales and Use Tax, and other tax and fee programs. The current electronic filing parameters do not allow taxpayers to file an ABT return without also filing informational schedules for ABT at the same time. Therefore, the change will not be burdensome.

Decreased processing times and increased efficiencies of processing the informational schedules will allow data to be uploaded sooner, and more timely distribution of revenues.

Cons

- None

Probable Support and Opposition: Unknown.

Other External Parties that may be Affected: CDTFA.

Fiscal Impact (If known): None.

Item 2—Summary: Review and consideration of a proposal that would amend Revenue and Taxation Code (R&TC) sections 12951 and 12977 to align the insurance tax program with other tax and fee programs administered by CDTFA on behalf of the BOE with respect to the 10 day public disclosure requirement for credits, cancellations, and refunds more than $50,000.

Existing Law: R&TC section 12951 sets forth procedures regarding cancellations and refunds for the Insurance Taxation statutes.

It states:

12951.

a) If any amount has been illegally assessed, the board shall set forth that fact in its records, certify the amount determined to be assessed in excess of the amount legally assessed, and the insurer or surplus line broker against which the assessment was made, and authorize the cancellation of the amount upon the records of the Controller and the board. The board shall mail a notice to the insurer or surplus line broker of any cancellation authorized. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

b) This section shall become operative on July 1, 2013.

R&TC section 12977 sets forth requirements for refunds or credits for collected taxes.

It states:

12977.

a) If the Board determines that any tax, interest, or penalty has been paid more than once or has been erroneously or illegally collected or computed, the Board shall set forth that fact in its records of the Board, certify the amount of the taxes, interest, or penalties collected in excess of what was legally due, and from whom they were collected or by whom paid, and certify the excess to the Controller for credit or refund.

b) The Controller upon receipt of a certification for credit or refund shall credit the excess on any amounts then due and payable from the insurer or surplus line broker under this part and refund the balance.

c) Any proposed determination by the Board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

d) This section shall become operative on July 1, 2013.

Code Sections to Amend: R&TC sections 12951 and 12977.

Identification of Problem: The insurance tax program statutes need technical updates. Current references to "proposed determinations" in the R&TC are technically incorrect following recent procedural changes and statutory updates in surrounding R&TC sections.

Proposed Solution: This proposal would update the insurance tax program sections in the R&TC to be consistent with the corresponding changes made to the Alcoholic Beverage Tax (ABT) program statutes last year. The proposed change would simply clarify that "proposed determinations" are now referred to as "determinations" by the Board; and that any amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days "after" the effective date of that determination (rather than what used to be 10 days prior to a proposed determination').

Justification: Without legislative action, there would be incorrect statutory and procedural references for cancellations, refunds and credits in these two R&TC sections governing the insurance tax program.

Arguments—Pro and Con:

Pros

- Efficient and accurate program references and administration.
- Provides taxpayers their refunds in a timely manner.
- Provides consistency with other BOE and CDTFA tax programs.

Cons

- None.

Probable Support and Opposition: Unknown.

Other External Parties that may be Affected: CDTFA.

Fiscal Impact (If known): None.

Item 3—Summary: This proposal amends the applicable Revenue and Taxation Code (R&TC)[27] sections to authorize electronic service of levies under the Alcoholic Beverage Tax (ABT) program, otherwise known as serving a Notice of Determination (NOD) or Notice of Jeopardy Determination (NOJD).

Existing Law: R&TC section 32271 generally outlines the BOE's mandatory procedures for deficiency determinations in the ABT program. Current law requires BOE to provide taxpayers with written notice of its NOD/DOJD by mail to the address that appears in the records of the Board, or by delivery in person. Other applicable R&TC sections make similar references to the terms "mail" or "mailed" as the only recognized delivery method.

Identification of Problem: Currently, taxpayers who fail to file a timely petition for redetermination often claim that the NOD or NOJD was lost in transit (USPS Mail). Often, the letter may never arrive because the taxpayer has moved and did not update their mailing address with CDTFA.

Proposed Solution: Amend the following R&TC sections to allow a notice of levy under the ABT program to be served electronically to levied parties under specified circumstances.

This proposal would ensure that taxpayers will receive proper notification of a NOD or DOJD so that they have an opportunity to file a timely petition for redetermination if they so wish.

The proposed language would authorize electronic service of a NOD or DOJD when 1) The taxpayer requests electronic transmission; or 2) Any evidence indicates that the taxpayer no longer receives mail at the address of record and has previously provided an address for electronic mail (email). The electronic notice of service would be deemed complete at the time the NOD or DPJD is electronically transmitted via the taxpayer's secure web portal.

Code Sections to Amend: R&TC sections 32271, 32272, 32272.1, 32273, 32291, 32306, 32312, and 32432.5.

Background: BOE's Authority to Assess an Alcoholic Beverage Tax Liability. If BOE is not satisfied with the amount reported on a taxpayer's return or the amount paid, or if any person fails to make a return, BOE may determine the amount required to be paid upon the basis of any information it possesses or subsequently acquires and issue an NOD or an NOJD.

[27] All references will be to the Revenue and Taxation Code unless otherwise specified.

Notices of Determination. If a taxpayer fails to file a petition within thirty (30) days from the date BOE issues an NOD, the liability assessed in the NOD will become final. Once the NOD is final, BOE may, in its discretion, accept a late petition as an "administrative protest" if there is a reasonable basis to believe that there may have been an error in the taxpayer's notice. If BOE accepts a late petition as an administrative protest, the taxpayer's late petition will generally be reviewed in the same manner as a timely petition, except that the taxpayer will not automatically be entitled to an appeals conference and collection activity may not be stayed. If the taxpayer pays the NOD in full and files a claim for refund, BOE will dismiss the administrative protest and allow the same appeal to continue as a claim for refund.

Notices of Jeopardy Determination. If the BOE believes that the collection of any tax required to be paid to the state will be jeopardized by delay, the BOE will issue a jeopardy determination which is immediately due and payable. If a taxpayer files a timely petition for redetermination of an NOJD and pays the required deposit, the petition will be reviewed in the same manner as other timely petitions. In contrast, if the taxpayer does not file a petition and pay the required deposit or pay the amount of the NOJD within ten (10) days of the service of notice, the taxpayer will be subject to a late payment penalty, and BOE's collection activities may continue. However, the taxpayer may, within 30 days of service of the NOJD, apply for an administrative hearing for one or more of the following purposes:

- Establish that the determination is excessive.
- Establish that the sale of property that may be seized should be delayed pending the administrative hearing because the sale would result in irreparable injury.
- Request the release of property.
- Request a stay of collection.
- Request administrative review of any other issue raised by the jeopardy determination.

If the taxpayer submits a timely application for an administrative hearing, the petition generally will be reviewed in the same manner as a timely petition. However, BOE may still pursue collection action.

Article XX, section 22 of the California Constitution authorizes the BOE to administer the Alcoholic Beverage Tax (ABT) and makes the BOE constitutionally responsible for the program. Through an Interagency Agreement (IAA), the CDTFA collects the ABT revenue and administers certain functions of the program in cooperation with the BOE.

Justification: Without adopting these proposed changes, the ABT program will not conform with the special tax and fee programs administered by the California Department of Tax and Fee Administration (CDTFA) leading to government inefficiencies in administration. This change will also provide taxpayers with a more efficient and reliable NOD/NOJD process.

Arguments—Pro and Con:

Pros

- Increases efficiency and administration of the ABT program by allowing notices to be served electronically, which is estimated to reduce processing times while continuing to provide taxpayers the ability to appeal determinations.
- Conforms the ABT program to other special tax and fee programs which authorize electronic service of levies.

Cons

- None.

Probable Support and Opposition: Unknown.

Other External Parties that may be Affected: CDTFA.

Fiscal Impact (If known): None.

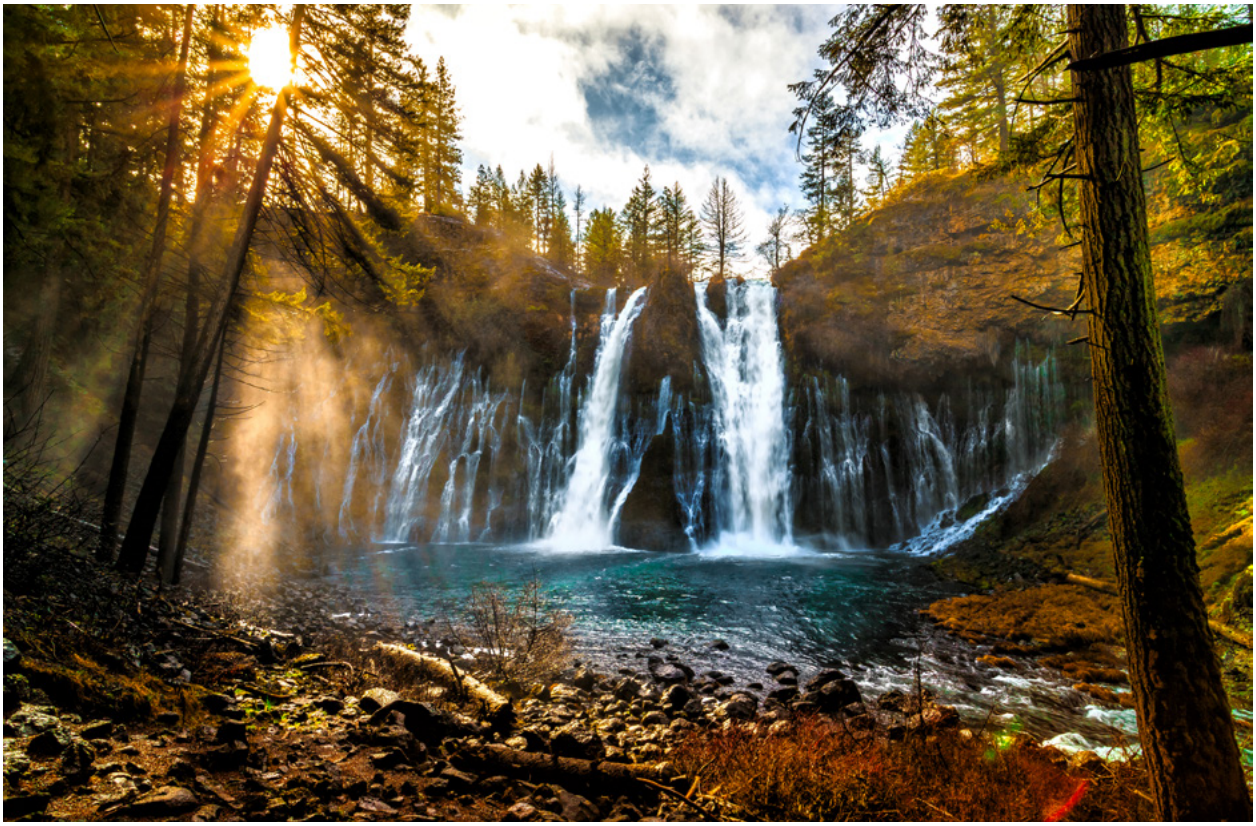
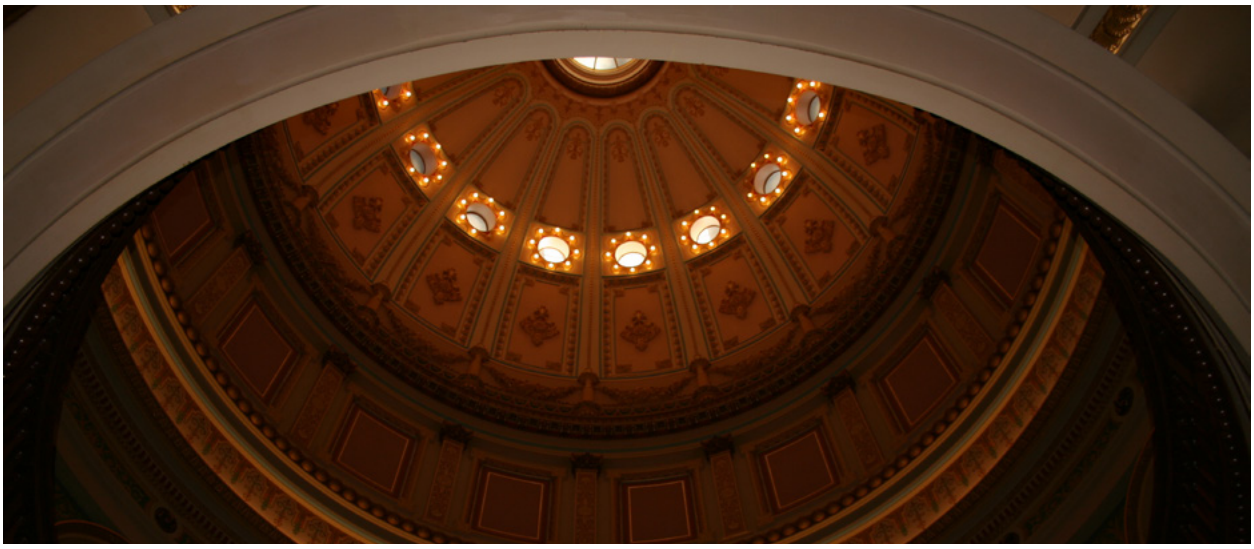
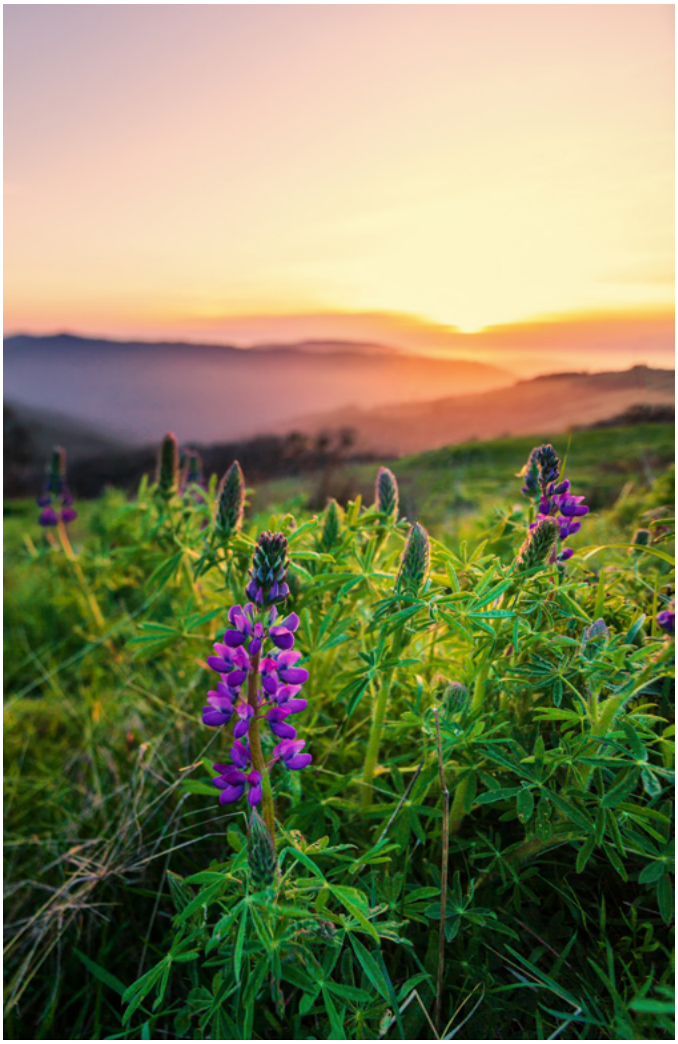


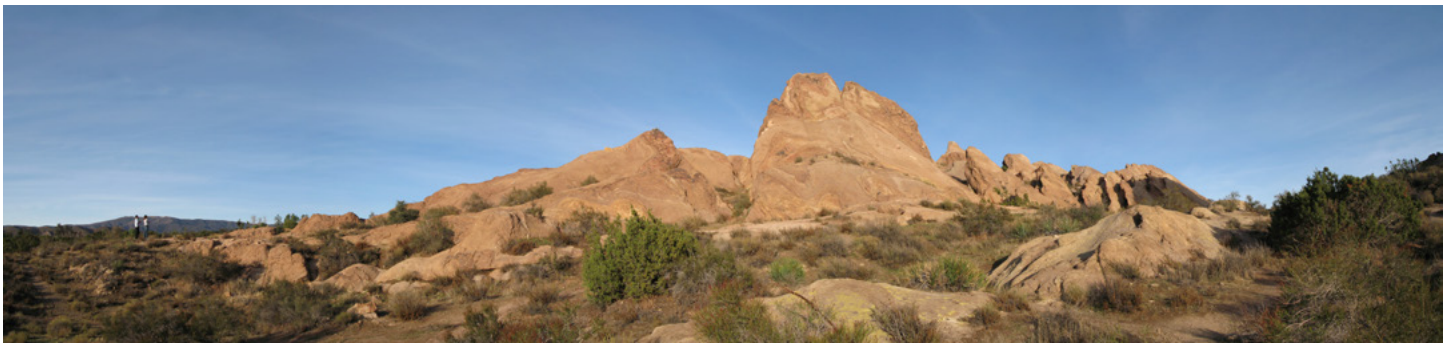
Table of Sections Affected

SECTIONS	ACTION	BILL NUMBER	CHAPTER NUMBER	SUBJECT
Civil Code				
§2924p	Amend	AB 2897	580	Property Tax: Welfare Exemption: Community Land Trusts
Government Code				
§64702	Amend	AB 2897	580	Property Tax: Welfare Exemption: Community Land Trusts
Health and Safety Code				
§50650.5	Amend	AB 2897	580	Property Tax: Welfare Exemption: Community Land Trusts
§50720.2	Amend	AB 2897	580	Property Tax: Welfare Exemption: Community Land Trusts
§50720.4	Amend	AB 2897	580	Property Tax: Welfare Exemption: Community Land Trusts
Revenue and Taxation Code				
§155.20	Amend	SB 1527	498	Property Taxation: Exemption: Low-Value Properties and Tribal Housing
§168.1	Add	AB 1879	217	Property Taxation: Filing
§214	Amend	AB 2897	580	Property Tax: Welfare Exemption: Community Land Trusts
§237	Amend	SB 1527	498	Property Taxation: Exemption: Low-Value Properties and Tribal Housing
§402.1	Amend	AB 1868	553	Property Taxation: Assessments: Affordable Housing
§402.1	Amend	AB 2897	580	Property Tax: Welfare Exemption: Community Land Trusts
§441	Amend	AB 1879	217	Property Taxation: Filing

SECTIONS	ACTION	BILL NUMBER	CHAPTER NUMBER	SUBJECT
§4985.05	Add	AB 2353	566	Property Taxation: Welfare Exemption: Delinquent Payments: Interests and Penalties
§12951 and §12977 §32202 and §32452 §32271, §32272, §32272.1, §32273, §32291, §32306, §32312, and §32432.5	Amend Amend Amend	SB 1528	499	California Department of Tax and Fee Administration (CDTFA) and State Board of Equalization (BOE)—Omnibus Bill







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