California State
Board *of* Equalization

Legislative Bill Analysis

Legislative, Research & Statistics Division

Senate Bill 1431 (Glazer)
Date: May 6, 2020 (amended)
Program: Property Taxes
Sponsor: Author
Revenue and Taxation Code Section 170
Effective: Upon chaptering, retroactive to April 5, 2020

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Summary: Regarding disaster property tax relief provisions, provides that "damage" includes a diminution in the value of property as a result of the COVID-19 pandemic.

Fiscal Impact Summary: Indeterminable.

Existing Law: **Disaster Relief.** The law[1] allows a county board of supervisors to enact an ordinance to provide property tax relief to property owners following a "disaster" (i.e., a misfortune or calamity) if the property owner's property is damaged or destroyed, and the property owner is not at fault. Currently, all counties have enacted a disaster relief ordinance. A county's disaster relief ordinance may apply to both a "major" event impacting a widespread area or region resulting in a governor-issued proclamation, such as a wildfire, and a site-specific event, like a single home fire. In the case of a major event, property tax law uses the terminology "an area or region subsequently proclaimed by the Governor to be in a state of disaster."

This disaster relief law permits the county assessor to immediately reassess the property to recognize the property's market value loss following the event. To qualify, the property value loss must be at least $10,000. When the relief can be granted, the assessor reduces the property's assessed value in proportion to the property's market value loss immediately after the event. Then the county calculates a pro-rata tax reduction for the remainder of the fiscal year. The affected property retains the reduced assessment, until the property is restored, repaired, or reconstructed. The law permits annual increases to reflect partial repair, reconstruction, or restoration.

Applications. Generally, property owners can file an application to request reassessment within 12 months of the event or the date specified in the county ordinance, whichever is later. In some cases, the assessor can initiate the reassessment without requiring the property owner to file an application.[2]

Governor State of Emergency Proclamations. The Government Code[3] authorizes the governor to proclaim a state of emergency under specified circumstances, including:

- "State of war emergency" means the condition which exists immediately, with or without a proclamation thereof by the governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent.
- "State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state.

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[1] Article XIII, section 15, of the California Constitution; Revenue and Taxation Code (RTC) section 170.
[2] RTC section 170(a) and (l). Also, assessors can mail applications to property owners to prompt the owners to file a claim for reassessment under RTC section 170(d)(1).
[3] Government Code (GC) sections 8558 and 8625.

- "Local emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city.

Proposed Law: Related to a major misfortune or calamity that results in a governor-issued proclamation, this bill:

- **State of emergency.** Amends the terminology in property tax law that refers to governor-issued proclamations to instead read "an area or region subsequently proclaimed by the Governor to be in a state of emergency or state of disaster."
- **Major misfortune or calamity.** Expressly provides that a "major misfortune or calamity" includes the COVID-19 pandemic.
- **Damage definition.** Expressly provides that "damage" includes restricted access to property caused by any law, order, rule, or regulation of the state or any city, county, or other political subdivision providing tenant protections in response to the COVID-19 pandemic, including, but not limited to, eviction controls imposed under Executive Order No. N-33-20, issued on March 19, 2020, and Executive Order No. N-37-20, issued on March 27, 2020.
- **Filing period.** Provides that a person who owns property eligible for property tax relief under these provisions may submit an application within 12 months of the effective date of this bill or within the time specified in the county's ordinance, whichever is later.

Enactment. This bill is effective immediately upon enactment, but provides that it is retroactive to April 5, 2020.

In General: **Physical Damage.** Section 15 of article XIII of the California Constitution provides that the "Legislature may authorize local government to provide for the assessment or reassessment of taxable property physically damaged or destroyed after the lien date to which the assessment or reassessment relates."

This is implemented by RTC section 170. RTC section 170(g) states that the "assessed value of the property in its damaged condition … shall be the taxable value of the property until it is restored, repaired, reconstructed … ."

The requirement of physical damage has been upheld by the courts. The Second District Court of Appeal in *T. L. Enterprises Inc. v. County of Los Angeles* (1989) 215 Cal.App.3d 876, stated in its decision:

> Subdivision (d) of section 51 and section 170 [italics, footnote removed] provide for computation of assessed value treating land and improvements separately only where property has been damaged or destroyed by "disaster, misfortune or calamity." The objective of the provisions, read in their entirety, is to afford financial relief to the owners of property physically damaged or destroyed by an unforeseeable occurrence beyond their control.

In addition, the First Appellate Court of Appeal, in *Slocum v. State Board of Equalization* (2005) 134 Cal. App. 4th 969, stated in its decision:

> … section 170 implements article XIII, section 15 of the California Constitution. The plain language of this constitutional provision permits reassessment where taxable property

> is "physically damaged or destroyed." … In other words, physicality has *always* been a constitutional requirement, even when not explicitly stated. [Emphasis in original document.]

Indirect Physical Damage. RTC section 170(a)(1) provides that the term "damage" includes diminution in value due to restricted access to the property, where the restricted access was caused by a major misfortune or calamity which spurred the Governor to proclaim the area to be in a state of disaster. Additionally, reassessment is available under RTC section 170(a)(3) for a possessory interest in government land where a misfortune or calamity has restricted access to that land. Regarding restricted access, the *Slocum* court further provided:

> Nonetheless, we recognize that in section 170, subdivision (a)(1) and (3) the Legislature delineated two exceptions to the general meaning of "damage or destruction" as implying direct physical injury to the property, thereby providing limited relief for indirect physical damage.
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> … Airlines have asked us to sanction relief based on restricted access in the absence of *any* physical damage in California. Such relief has never been available under section 170 and its predecessors.

Disaster Relief. Property tax law provides a variety of property tax relief to disaster victims. These laws address both the short and long term consequences of the disaster. In the short term, the law allows property tax liability to be redetermined to reflect the damage to the property. Additionally, some taxpayers may defer their next property tax installment payment. In the long term, the law allows property owners to rebuild or repair damaged properties without incurring any increase in property tax liability. Alternatively, property owners may relocate without an adverse property tax impact. The following table lists these disaster relief provisions.

DISASTER RELIEF– IMMEDIATE RELIEF

Section	Property Type	Type of Relief Available	Type of Disaster
170	All property types	Reassessment (resulting in refund of property taxes paid or adjusted bill)	Any disaster or calamity
194 194.1	Real property and manufactured homes	Property tax deferral – next installment (does not apply to a mortgage-related impound account)	Governor-proclaimed
195.1	Real property and manufactured homes	Property tax deferral – second consecutive installment (if enacted by county ordinance)	Governor-proclaimed
194.9	Real property and manufactured homes	Property tax deferral – supplemental assessment (if enacted by county ordinance)	Governor-proclaimed

DISASTER RELIEF – RECOVERY

RTC Section	Property Type	Type of Relief Available	Type of Disaster
51	Real property only	• Base year value reduction to reflect removal (tear down). • Lien Date Value Test. Lesser of factored base year value or market value. • Assessed value adjustments related to RTC section 170.	Any disaster or calamity
70	Real property only	New construction exclusion: replacement	Any disaster or calamity
69	All property types	Base year value transfer within the same county	Governor-proclaimed
69.3	Principal place of residence	Base year value transfer to select other counties[4]	Governor-proclaimed
69.5	Principal place of residence - over 55 or physically disabled	Base year value transfer within the same county or to select other counties	Any disaster or calamity
172 & 172.1	Manufactured home	Base year value transfer	Governor-proclaimed
5825	Manufactured home	New construction exclusion; Base year value transfer	Any disaster or calamity

Background:

Previous legislation. Senate Bill 1304 (2016, vetoed) would have extended the RTC section 170 disaster relief for a loss in property value related to environmental contamination due to a major event resulting in a governor-issued proclamation and would have authorized potential relief to property owners impacted by the Porter Ranch neighborhood methane gas leak that occurred from 2015 to 2016. The Governor indicated his veto was because the bill expands the basis for future tax relief in similar circumstances and because the county assessor can already reduce the assessed value of homes to reflect changed market conditions.

Commentary:

1. **Author's Statement.** Senate Bill 1431 would expand the eligibility for disaster reassessment of certain limited properties affected directly or indirectly by the COVID-19 pandemic. By expanding the eligibility, this bill would allow temporary mid-year relief to taxpayers until the property recovers to its trended base year value.

2. **Constitutional Issue?** RTC section 170 implements section 15 of article XIII of the California Constitution, which requires physical damage. In *Slocum v. State Board of Equalization*, the court opined that there must be physical damage in California, whether it be direct or indirect. If this bill extends disaster relief to property with no physical damage requirement, it is unconstitutional. However, the language is ambiguous.

[4] Contra Costa, Glenn, Los Angeles, Modoc, Orange, San Diego, San Francisco, Santa Clara, Solano, Sonoma, Sutter, Ventura, and Yuba.

3. **Ambiguous Language**. This bill appears to attempt to allow disaster relief for purely economic (i.e., no physical) damage. It attempts to do this, however, by adding to the definition of "damage" without explicitly stating that no physical damage is required or defining *physical* damage as including damage caused by COVID-19. Without such language, since *Slocum* clearly required physical damage for section 170 eligibility, the statute will likely be interpreted to include the COVID-19 circumstances as a major misfortune or calamity for which relief is possible if it caused some physical damage to property. To interpret the statute otherwise absent such explicit language, would be to interpret the statute in a manner directly contradictory to *Slocum* and article XIII, section 15 of the California Constitution.

4. **Governor's Proclamation of State of Emergency or State of Disaster.** This bill modifies RTC section 170(a)(1) to add the phrase "state of emergency," consistent with the manner in which governors issue proclamations in accordance with the Government Code. This adds clarity to the property tax law. The text of the proclamation itself may or may not state "existence of conditions of disaster." Nonetheless, the governor does not proclaim a "state of disaster." The governor proclaims a "state of emergency." In the aftermath of a major event, inconsistent terminology with the governor's actual action causes confusion in administering the provisions of RTC section 170. Amending the property tax law terminology to instead read "an area or region subsequently proclaimed by the governor to be in a state of emergency or state of disaster" will clarify this requirement.

5. **Major misfortune and calamity.** To be eligible for relief under RTC section 170, property must be damaged or destroyed by a "major misfortune or calamity" that caused the Governor to proclaim the area or region to be in a state of disaster. This bill specifically provides that a "major misfortune or calamity" includes the COVID-19 pandemic.

6. **Market value loss.** To allow RTC section 170 disaster relief reassessment, the market value loss related to any event, including major events, must be at least $10,000. At this time, the market value loss related to the COVID-19 virus is unclear.

7. **Disaster due to Tenant Protection/Eviction Controls by Government Entities.** This bill expressly provides that "damage" includes market value loss related to restricted access caused by any law, order, rule, or regulation of the state or any city, county or other political subdivision providing tenant protections in response to the COVID-19 pandemic, including, but not limited to, eviction controls imposed under Executive Order No. N-33-20, issued on March 19, 2020, and Executive Order No. N-37-20, issued on March 27, 2020. Executive Order No. N-37-20 forbids the eviction of a tenant from a residence or dwelling unit for nonpayment of rent through May 31, 2020. Legislative intent language states that this bill provides property tax relief to taxpayers who own multifamily residential buildings that have suffered material rent loss as the result of efforts to preserve housing available during the COVID-19 pandemic. Other types of rental property, such as shopping centers and strip malls, have also suffered rent loss due to the closure of commercial establishments. It is unclear whether or not this bill also applies to these types of businesses.

8. **Midyear financial relief for out of the ordinary events.** The law is intended to apply to a disaster, misfortune, or calamity that is out of the ordinary. The law's purpose is to afford financial relief to the owners of property damaged or destroyed by an unforeseeable occurrence

beyond their control.[5] The primary function of RTC section 170 is to enable mid-fiscal year adjustments in the immediate aftermath of a misfortune or calamity and outlines the administrative mechanism for doing so.

To provide relief, RTC section 170(b) states that assessors are to reduce base year values by the percentage difference in market value from immediately before to immediately after the event. In the COVID-19 situation, what would be the event date to be considered in making this market value determination? This bill provides that the amendments apply beginning on and after April 5, 2020. Is April 5, 2020 intended to be the “event date,” or is April 5, 2020 intended to be the date on which taxpayers can begin to consider their property as having been damaged by COVID-19 but can measure that damage on some other date?

RTC section 170 is intended to apply in the short term. For example: (1) current fiscal-year taxes will be reduced for the portion of the fiscal year remaining after the event and (2) in the following fiscal year, the property will be fully repaired or will be in the process of being repaired, restored, or reconstructed and the assessed value will be adjusted to reflect the complete repair or partial repair. However, in the case of economic damage, restoring the property could take years.

9. **Restoration, Repair, or Reconstruction.** The law allows the base year value to be restored when the damaged property has been restored, repaired, or reconstructed. Under the provisions of this bill, how will an assessor determine when an economically-damaged property is considered to be "restored, repaired, or reconstructed"? In its current form, and if COVID-19 is considered to create physical damage, property would likely be considered to be restored, repaired, or reconstructed, when the physical contamination by COVID-19 is cleared, not when the emergency orders are lifted or when economic conditions return to their pre-pandemic state.

10. **Added time to file applications.** To give property owners sufficient time to request a possible reassessment, this bill allows applications to be filed within 12 months of enactment or within the time specified in the county's disaster relief ordinance, whichever is later.

Costs: The BOE will incur absorbable costs to update its documents, website materials, and provide guidance to assessors.

Revenue Impact: Estimating the revenue impact of this bill is difficult. Staff cannot estimate the number or type of properties that would qualify for relief under this bill. Moreover, for disaster relief purposes, it is unclear as to what point in time a market value determination would be made. However, the assessed value of any property is variable and depends on the facts of each property on a case-by case basis. Revenue impact depends on the number of properties that would qualify for relief under this bill, (2) the type of properties, (3) the taxable value of the properties, and (4) current market value of the properties. At this time, based on these unknown factors, the revenue loss is indeterminable.

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[5] *T. L. Enterprises Inc. v. County of Los Angeles* (1989) 215 Cal.App.3d 876.