California State Board of Equalization
Legislative, Research & Statistics Division

LEGISLATIVE BULLETIN

PROPERTY TAX LEGISLATION
2019

FOREWORD

The 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 screens 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 2019. The legislative bill analyses for 2019 are posted on the BOE's website at http://www.boe.ca.gov/app/proptax-leg-analyses.aspx?year=2019-2020.

2019 PROPERTY TAX LEGISLATION
TABLE OF CONTENTS

CHAPTERED LEGISLATION ANALYSES **PAGE**

Assembly Bill 46 (Carrillo), Chapter 9 4

Assembly Bill 608 (Petrie-Norris), Chapter 92 7

Assembly Bill 872 (Aguiar-Curry), Chapter 685 11

Senate Bill 196 (Beall), Chapter 669 19

Senate Bill 780 (Governance and Finance Committee), Chapter 329 32

Senate Bill 791 (Governance and Finance Committee), Chapter 333 35

TABLE OF SECTIONS AFFECTED 46

Assembly Bill 46 (Carrillo), Chapter 9
Veterans' Exemption

Effective January 1, 2020.

Among others, amends section 253 of the Revenue and Taxation Code.

This bill analysis is limited to property tax-related provisions.

Summary: Relating to the provisions about filing for the veterans' exemption in person, replaces certain terms relating to mental illness with more culturally sensitive terms. Additionally, replaces references to a specific gender with gender-neutral terms.

Former Law: The California Constitution[1] provides that all property is taxable unless otherwise provided by law. The California Constitution provides a veterans' exemption, not to exceed $4,000, for qualified veterans who own limited property.[2] The veterans' exemption may be claimed by a person currently serving in the military service or one who has been honorably discharged, the unmarried surviving spouse, or either parent of a deceased veteran meeting the service requirements. In order to qualify for this exemption, the claimant may not own property, real or personal, worth more than $5,000 if the claimant is single. If married, the couple may not own property worth more than $10,000. In addition, the claimant must have lived in California on the lien date, January 1.

To apply for the veterans' exemption, a claim[3] must be filed each year with the assessor of the county where the property is located. When making the first claim, any person claiming the veterans' exemption, or the spouse, legal guardian, or conservator of such person, or one who has been granted a power of attorney by such person, must appear before the assessor,[4] give all information required, answer all questions in an affidavit prescribed by the State Board of Equalization (BOE), and subscribe and swear to the affidavit before the assessor. In subsequent years the person claiming the veterans' exemption, or the spouse, legal guardian, or conservator of such person, or one who has been granted a power of attorney by such person, may file the affidavit under penalty of perjury by mail.

This exemption has become effectively obsolete because for any veteran who owns a home, the homeowners' exemption of $7,000 provides greater tax savings.[5] Veterans who do not own homes, but own other taxable property (i.e., a boat or business personal property) are disqualified from the veterans' exemption if they own property worth more than $5,000 (if single) or $10,000 (if married). For 2018-19, only one veteran in California received this exemption.

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[1] California Constitution article XIII, section 1.

[2] Article XIII, section 3, subdivisions (o), (p), (q), (r); see also Revenue and Taxation Code (RTC) section 205.

[3] BOE-261, *Claim for Veterans' Exemption.*

[4] RTC section 253.

[5] The veterans' exemption is $4,000, and the homeowners' exemption is $7,000. A homeowner may receive one exemption, not both.

Amended Law: This bill changes multiple code sections, including Revenue and Taxation Code (RTC) section 253, which relates to the provisions that allow a veteran to file for the veterans' exemption in person. This bill replaces (1) certain terms relating to mental illness with more culturally sensitive terms, and (2) references to a specific gender with gender-neutral terms.

In General: In order to qualify for the veterans' exemption, a person must first be considered a veteran by the government by meeting certain criteria regarding his or her service as a veteran. A *veteran* means a person serving or who has served in and has been discharged under honorable conditions from service, in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Revenue Marine (Revenue Cutter) Service; and served in either of the following:[6]

- In time of war or in time of peace in a campaign or expedition for which a medal has been issued to the veteran by Congress, or
- In time of peace and because of a service-connected disability was released from active duty.

Persons from the National Guard or National Guard Reserve who are called into active service as part of the Armed Forces of the United States may also qualify for the veterans' exemption.

There are 26 wars and 4 campaigns that qualify for the veterans' exemption. The majority of the wars and campaigns listed were over 100 years ago, dating back to the Revolutionary War. Twenty-two of the 26 wars that ended prior to 1902 are not listed below, since the likelihood of any qualified veterans or, if deceased, their spouses or parents, are no longer living. The following wars or campaigns are those which may still have living qualified claimants:

- War with Germany-Austria, April 6, 1917 - November 11, 1918
- World War II, December 7, 1941 - January 1, 1947
- Campaign against the North Koreans and Chinese Communists in Korea, June 27, 1950 - January 31, 1955
- Campaign against the Viet Cong and North Vietnamese Communists in South Vietnam, August 5, 1964 - May 8, 1975
- First Nicaraguan campaign, July 29, 1912 - November 14, 1912
- Second Nicaraguan campaign, August 27, 1926 - January 2, 1933
- Yangtze River campaign in China, September 3, 1926 - October 21, 1927 or March 1, 1930 - December 31, 1932
- All other campaigns for service in which a medal has been issued to the veteran by the Congress of the United States

[6] Article XIII, section 3, subdivisions (o), (p), and (q).

To apply for the veterans' exemption, a claim must be filed each year with the assessor of the county where the property is located. The claim form, BOE-261, *Claim for Veterans' Exemption*, is available from the county assessor. To receive the full 100 percent exemption for property owned on the January 1 lien date, the claim must be filed by February 15.

Background: Veterans' Exemption. At its peak, from 1956 through 1962, over one million persons received the veterans' exemption. For 2018-19, only one person received the exemption. This table reflects the number of persons who have been granted the veterans' exemption in the past six years.

ROLL YEAR	REGULAR VETERANS' EXEMPTION
2013-14	6
2014-15	4
2015-16	2
2016-17	6
2017-18	0
2018-19	1

Usage of the veterans' exemption declined for two reasons. First, in 1974, home-owning veterans transitioned to the homeowners' exemption when that exemption amount increased and provided greater tax savings. Second, the strict property value limitations fixed in the California Constitution ($5,000 if single and $10,000 if married) make most veterans ineligible.

Commentary:

1. **No Change to Exemption Qualifications.** This bill changes multiple code sections, including RTC section 253, which requires the first filing for the veterans' exemption to be made in person. These changes replace certain terms relating to mental illness with more culturally sensitive terms and changes gender references to neutral terms. These changes do not affect the qualifications for the exemption.

2. **Minimally-Used Exemption.** For 2018-19, only one veteran in California received the veterans' exemption. This exemption has become effectively obsolete because the strict property value limitations fixed in the California Constitution ($5,000 if single and $10,000 if married) make most veterans ineligible. Additionally, for any veteran who owns a home, the homeowners' exemption of $7,000 provides greater tax savings.

Assembly Bill 608 (Petrie-Norris), Chapter 92
Low Value Exemption

Effective July 12, 2019.

Amends section 155.20 of the Revenue and Taxation Code.

Summary: This bill provides that, for a five-year period beginning January 1, 2020, the $50,000 limit that a county board of supervisors may exempt from property tax under a "low value" ordinance[7] applies to any possessory interest. In addition, once a low value ordinance is enacted, this bill allows the assessor a choice on how to administer the low value exemption, without specific authorization from the county board of supervisors.

Former 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.

Revenue and Taxation Code (RTC) 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.

The amount of the low value exemption may not exceed $10,000 except that the limit is 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.

In administering the low value exemption, an assessor enrolls and then exempts property subject to the low value ordinance. If the assessor has been specifically authorized by the county board of supervisors, the assessor can administer the low value exemption by not enrolling property subject to the exemption.[8]

Amended Law:

Possessory Interests. This bill provides that, for a five-year period that begins on January 1, 2020 and ends on December 31, 2024, the $50,000 maximum value of property that a county board of supervisors may exempt applies to all possessory interests. Beginning January 1, 2025, the

[7] 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.
[8] RTC section 155.20(e)(2).

$50,000 limit for possessory interests will be limited to a temporary and transitory use in a publicly owned fairground, fairground facility, convention facility, or cultural facility.

Administration. Once a low value ordinance is enacted, this bill gives the assessor the choice on how to administer the exemption by either option:

- Enroll the property and apply the low value exemption, or
- Not enroll property that qualifies for the low value exemption

Under this bill the assessor would not need specific authority from the county board of supervisors to not enroll property that qualifies for the low value exemption.

In General:

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 either immune or 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.

RTC 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, two-thirds of the membership of each house concurring, 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 RTC section 155.20 to provide the necessary statutory implementation. RTC 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." Currently, the amount of the low value exemption may not exceed $10,000 except that the limit is 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.

In determining the level of the exemption, a county board of supervisors is required to:

> … determine at what level of exemption the costs of assessing the property and collecting taxes, assessments, and subventions on the property exceeds the proceeds to be collected. The board of supervisors shall establish the exemption level uniformly for different classes of property. In making this determination, the board of supervisors may consider the total taxes, special assessments, and applicable subventions for the year of assessment only or for the year of

assessment and succeeding years where cumulative revenues will not exceed the cost of assessments and collections.[9]

Low Value Ordinances - Possessory Interests. A board of supervisors can enact an ordinance to exempt property with a total base year value or full value of less than $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.

For purposes of the low value exemption, a *publicly owned convention or cultural facility* is defined[10] as a publicly owned convention center, civic auditorium, theater, assembly hall, museum, or other civic building that is used primarily for staging any of the following:

- Conventions, trade and consumer shows, or civic and community events
- Live theater, dance, or musical productions
- Artistic, historic, technological, or educational exhibits

Background: The $50,000 low value ordinance for possessory interests was added to RTC section 155.20 in 1996 by Senate Bill 1737 (Stats. 1996, ch. 570). The City of San Jose sponsored the measure over a concern that the taxation of San Jose Convention Center users would place their convention center at a competitive disadvantage with other event venues. As enacted, the $50,000 exemption for possessory interests was limited to uses of publicly owned convention or cultural facilities. The following year, Senate Bill 33 (Stats. 1997, ch. 106) added possessory interests in fairgrounds to the type of possessory interests that could be exempt under the $50,000 low value ordinance.

Assembly Bill 1971 of the 1998 legislative session (as introduced) would have amended RTC section 155.20 to increase from $50,000 to $100,000 the value of possessory interests in fairgrounds and convention or cultural centers that may be exempted under a low value ordinance adopted by a county board of supervisors. AB 1971 was sponsored by the City of Anaheim to avoid property tax assessments on its upcoming conventions. These provisions were amended out.

Assembly Bill 357 of the 2003 legislative session (as introduced) would have amended RTC section 155.20 to allow a board of supervisors in a county with a declining population to increase the value of possessory interests in a fairground, convention, or cultural facility that may be exempt from property tax under a "low value ordinance," from $50,000 to $100,000. These provisions were amended out.

Commentary:

1. **Author's Statement.** AB 608 will rationalize existing law governing low value ordinance exemptions, eliminate wasteful and inefficient administrative costs, and save money for

[9] RTC section 155.20(b)(2).
[10] RTC section 155.20(b)(1).

both government and small business owners. Though a minor change, this is a win-win for both government and small businesses.

2. **Possessory Interests Low Value Exemption.** Under current law, the amount of the low value exemption is 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. This bill provides that the $50,000 limit applies to all possessory interests for a five-year period that begins on January 1, 2020 and ends on December 31, 2024. Thereafter, the $50,000 limit reverts 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.

3. **Counties with Possessory Interests Low Value Ordinances.** According to data provided to the BOE, 23 counties have adopted a low value ordinance for possessory interests, with 14 counties at the maximum $50,000 level.

4. **County Participation Optional.** This change would take effect only if a county board of supervisors subsequently amends its ordinance to apply to all possessory interests.

5. **Counties Determine their Maximum Exemption Amount.** Counties set the appropriate level of the exemption. The manner of preparing the cost-benefit analysis in each county may vary. Where the analysis is identical, the actual break-even point will still likely vary because of the uniqueness of costs in each particular county.

6. **Administration of Exemption.** This bill allows a county assessor the option to either (1) enroll and then exempt the taxable possessory interest, or (2) not enroll the taxable possessory interest subject to the exemption. If the assessor opts to not enroll the exempted taxable possessory interest, the assessor is still responsible for tracking those possessory interests to make sure they continue to meet the $50,000 threshold for exemption.

Assembly Bill 872 (Aguiar-Curry), Chapter 685
Change in Ownership Exclusion for Transfer of Corporation Stock

Effective October 9, 2019.

Amends section 62 of the Revenue and Taxation Code.

Summary: Excludes from change in ownership any parent-to-child transfer of stock in a qualified corporation that owns qualified real property, provided that the transfer is due to the death of the parent.

Former Law: For property tax purposes, real property is reassessed from its Proposition 13 protected value (called the "base year value") to its current market value when real property undergoes a change in ownership.[11] When a "change in ownership" occurs, the law requires the assessor to reassess the property to its current fair market value.[12] Different laws apply to a person who buys real estate and a person who obtains ownership interests in a legal entity that owns real estate.

Interests in Real Property. Revenue and Taxation Code (RTC) section 61(j) provides that a change in ownership includes the transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner or any other person. As a general rule, the law requires a reassessment equal to the percentage interest transferred. RTC section 62 provides numerous exclusions from change in ownership for a variety of real property ownership interest transfers. The following exclusions are relevant to this bill:

- **Proportional Ownership Interests Exclusion.** Relevant to legal entities, under RTC section 62(a)(2) and Property Tax Rule 462.180(b)(2), a transfer of real property to a legal entity does not result in a reassessment if the transfer is merely a change in the method of holding title and the proportional ownership interests in the real property are identical before and after the transfer. However, after a transfer of real property qualifies for this exclusion from reassessment, the persons holding ownership interests in the legal entity immediately after the transfer are considered *original co-owners* for purposes of tracking subsequent transfers of those interests.

- **Parent-Child and Grandparent-to-Grandchild Exclusion.** RTC section 63.1 provides that the terms "purchased" and "change in ownership" shall not include the purchase or transfer of the principal residence or the first $1 million of the adjusted base year value of all other real property between parents and their children and, under limited circumstances, from grandparents to their grandchildren. This exclusion applies to a transfer of real property and generally does not apply to a transfer of interests in a legal entity.

[11] California Constitution, article XIII A, section 2; RTC section 110.1.

[12] Article XIII A, section 2; RTC sections 60 – 69.5.

Interests in Legal Entities. RTC section 64 sets forth the change in ownership provisions for the purchase or transfer of ownership interests in legal entities (e.g., stock in a corporation, interests in a limited liability company, or interests in a partnership) that own real property. As a general rule, under RTC section 64(a), transfers of ownership interests in legal entities do *not* constitute a change in ownership (and, therefore, no reassessment) of the legal entity's real property. However, there are two exceptions:

- **Change in Legal Entity Control.** RTC section 64(c)(1) requires reassessment when any person or entity obtains control through direct or indirect ownership or control, of more than 50 percent of corporation voting stock, or obtains more than a 50 percent ownership interest in any other type of legal entity. The reassessment applies to all California real property owned by the acquired legal entity (and any entity under its control).

- **Cumulative Transfers by "Original Co-Owners**." RTC section 64(d) requires reassessment when voting stock or other ownership interests representing cumulatively more than 50 percent of the total interests in a legal entity are transferred by any of the "original co-owners" in one or more transactions. The reassessment applies to California real property previously excluded from change in ownership under RTC section 62(a)(2).

Self-Reporting Requirement. Existing law requires legal entities to file a change in ownership statement[13] with the State Board of Equalization (BOE) within 90 days of a change in control or change in ownership under RTC section 64(c) or (d). The BOE notifies county assessors of changes in control and ownership of legal entities.

Amended Law: This bill excludes from change in ownership any parent-to-child transfer of stock in a qualified corporation that owns qualified real property, as long as the transfer is due to the death of a parent.

Qualified Corporation. This bill provides that a "qualified corporation" is a corporation that meets all of the following conditions:

- Created between March 1, 1975 and November 6, 1986, inclusive.

- The corporation owns qualified property.

- The only stockholders of the corporation are parents and their children.

Qualified Property. This bill provides that, for purposes of this exclusion, "qualified property" is a parcel of land that satisfies both of the following requirements:

- Contains the principal place of residence of the parents prior to their death that has been the continuous place of residence of a child of those parents since the creation of the qualified corporation.

[13] Form BOE-100-B, *Statement of Change in Control and Ownership of Legal Entities.*

- Its adjusted base year value as of the date immediately prior to the date of death of the last surviving parent does not exceed $1 million.

Report to BOE. This bill requires the county assessor to report quarterly to the BOE all transfers for which a claim for exclusion is made pursuant to these provisions and the amount of each exclusion claimed.

In General: California's system of property taxation values property at its 1975 fair market value, with annual increases limited to the inflation rate, as measured by the California Consumer Price Index, or 2 percent, whichever is less, until the property changes ownership or is newly constructed. At the time of the ownership change or completion of new construction, the value of the property for property tax purposes is reassessed based on current market value (called the "base year value"). Thereafter, the base year value is subject to annual increases for inflation. This value is referred to as the "factored base year value." This system results in substantial property tax savings for long term property owners.

Proposition 13. Proposition 13 was an initiative approved by voters on June 6, 1978, adding article XIII A to the California Constitution, and established a new system of property taxation as previously described. Related to this bill, subdivision (a) of section 2 of the initiative provided:

> The full cash value means the County Assessors valuation of real property as shown on the 1975-76 tax bill under "full cash value", or thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 tax levels may be reassessed to reflect that valuation.

The initiative did not define "change in ownership." The ballot pamphlet did not define, nor did it discuss, the term "change in ownership." Because the language of the initiative failed to define this integral element, it fell to the Legislature to determine what constitutes a "change in ownership" and to define the term through legislation. Consequently, the statutory scheme defining "change in ownership" enacted after Proposition 13 passed was done without specific constitutional mandate or authorization.

Task Force on Property Tax Administration. Following the passage of Proposition 13, the Assembly Revenue and Taxation Committee appointed a task force to study existing property tax statutes in light of Proposition 13, and to recommend the appropriate changes to the Revenue and Taxation Code in light of the ambiguities of Proposition 13. The Task Force on Property Tax Administration was a broad-based 35-member panel that included legislative and BOE staff, county assessors, attorneys in the public and private sectors, and trade associations. The Task Force issued its *Report of the Task Force on Property Tax Administration* to the Assembly Revenue and Taxation Committee on January 22, 1979.

Defining Change in Ownership. In defining change in ownership, the Task Force's goal was to distill the basic characteristics of a "change in ownership" and embody them in a single test, which could be applied evenhandedly to distinguish between "changes" and "non-changes." The

Task Force ultimately concluded that a change in ownership is a transfer that has all three of the following characteristics:

- It transfers a present interest in real property.
- It transfers the beneficial use of the property.
- The property rights transferred are substantially equivalent in value to the fee interest.

The Legislature adopted this definition in RTC section 60. Following the recommendation of the Task Force, the Legislature also included specific examples in RTC section 61 of transfers constituting a change in ownership and specific examples in RTC section 62 of transfers not constituting a change in ownership.

Parent-Child Exclusion. The parent-child change in ownership exclusion applies to (1) a principal residence, and (2) the first $1 million dollars of adjusted base year value of all other real property. The law specifies that the exclusion applies to a transfer of real property and does not apply to transfers of interests in legal entities. However, the law provides three exceptions for transfers of interests in certain resident-owned legal entities.[14] These are:

- Cooperative housing corporations (i.e., co-ops)
- Resident-owned mobilehome parks
- Resident-owned floating home marinas

These three types of legal entities are exceptions to the assessment of legal entities under RTC section 64 in that other statutes[15] treat transfers of interests in these types of legal entities as reassessable events.

- RTC section 61(i) expressly provides that a transfer of stock in a cooperative housing corporation is a change in ownership that requires reassessment of the property, unless an exclusion applies. Thus, a cooperative housing corporation is treated as real property for change in ownership purposes and is specifically allowed by RTC section 69.5(c)(1), the over 55/disabled base year value transfer provisions.
- RTC sections 62.1 and 62.5 provide an exclusion from change in ownership for a transfer of a mobilehome park or floating home marina to an entity formed by the tenants of the park or marina to purchase their park or marina from the former owner. Once the initial conversion of a mobilehome park or floating home marina has been excluded from change in ownership, a subsequent transfer of a pro rata interest in the entity that owns the park or marina is a change in ownership. RTC sections 62.1(b)(1) and 62.5(b)(1) specifically provide that a transfer of a pro rata interest may be excluded from change in ownership under RTC section 62, 63, or 63.1.

[14] RTC section 63.1(c)(8).

[15] RTC sections 61(i), 62.1(b), and 62.5.

Thus, for change in ownership purposes, transfers of interests in these types of legal entities are treated similar to transfers of interests in real property.

Because the parent-child exclusion does not apply to transfers of an interest in a legal entity (except for the above exceptions), the Legislature included uncodified legislative intent language that the parent-child change in ownership exclusion be liberally construed to carry out the purpose of Proposition 58.[16] The Legislature wrote, in part, that:

> … it is the intent of the Legislature that the provisions of Section 63.1 of the Revenue and Taxation Code shall be liberally construed in order to carry out the intent … Proposition 58 on the November 4, 1986, general election ballot to exclude from change in ownership purchases or transfers between parents and their children described therein.

The legislative purpose goes on to specify that the step transaction doctrine should not apply to following types of transfers involving legal entities:

> … Specifically, transfers of real property from a corporation, partnership, trust, or other legal entity to an eligible transferor or transferors, where the latter are the sole beneficial owner or owners of the property, shall be fully recognized and shall not be ignored or given less than full recognition under a substance-over-form or step-transaction doctrine, where the sole purpose of the transfer is to permit an immediate retransfer from an eligible transferor or transferors to an eligible transferee or transferees which qualifies for the exclusion from change in ownership provided by Section 63.1. Further, transfers of real property between eligible transferors and eligible transferees shall also be fully recognized when the transfers are immediately followed by a transfer from the eligible transferee or eligible transferees to a corporation, partnership, trust, or other legal entity where the transferee or transferees are the sole owner or owners of the entity or are the sole beneficial owner or owners of the property, if the transfer between eligible transferors and eligible transferees satisfies the requirements of Section 63.1.

Section 2(h) of article XIII A and RTC section 63.1 were subsequently amended when Proposition 193 was approved by the voters in March 26, 1996, which provides that the parent-child exclusion also applies to transfers from a grandparent to their grandchild, where the parent of that grandchild, who is a child of the grandparent, is deceased.

Background: Change in Ownership Exclusions. As previously stated, the term "change in ownership" was not defined by Proposition 13. Certain definitional "exclusions," including the interspousal exclusion, were embodied in the initial statutory definitions necessary to implement Proposition 13's change in ownership provisions. Some change in ownership exclusions are contained in statute, while others are contained in the Constitution.

[16] RTC section 63.1; section 2 of Stats. 1987, ch. 48 (AB 47), as amended by section 6 of Stats. 2006, ch. 224 (SB 1607).

Since the adoption of Proposition 13, the Constitution has been amended twice to provide for additional change in ownership exclusions for certain family transfers.[17] Under specified conditions, these transfers will not trigger a reassessment of the property to current fair market value. Instead, the property retains its prior base year value.

Other constitutional amendments have been approved by voters permitting a person to "transfer" his or her Proposition 13 base year value from one property to another property, thereby avoiding reappraisal of the newly purchased property to its fair market value, if certain conditions are met. In essence, a base year value transfer is another form of a change in ownership exclusion. Those constitutional amendments include:

PROP.	ELECTION	BASE YEAR VALUE TRANSFERS	RTC
3	June 8, 1982	Replacement Property After Government Acquisition	§68
50	June 3, 1986	Replacement Property After Disaster	§69
60	Nov. 6, 1986	Persons Over 55 - Intracounty	§69.5
90	Nov. 8, 1988	Persons Over 55 - Intercounty	§69.5
110	June 5, 1990	Disabled Persons	§69.5
1	Nov. 3, 1998	Contaminated Property	§69.4

Therefore, as noted above, some change in ownership exclusions are contained in statute, while others are contained in the Constitution.

Commentary:

1. **Author's Statement.** AB 872 protects children living on a small family farm who become owners of the farm after the death of a parent from a property tax reassessment, under limited circumstances. This bill supports California's policy to help protect agricultural open space and the dwindling number of family farm homesteads in the state. This bill also supports the public policy to protect a person from being unable to remain in their home due to a Prop 13 reassessment trigger to current market value.

2. **No Filing Requirement.** This bill does not contain any filing requirement for this proposed exclusion. Existing law requires legal entities to voluntarily file a BOE-100-B, *Statement of Change in Control or Ownership of Legal Entities*, with the BOE within 90 days of a change in control or change in ownership under RTC section 64(c) or (d), to avoid a penalty. To administer the exclusion proposed by this bill, the BOE will have to either amend the BOE-100-B and instructions or create a new form and instructions.

3. **Parent-Child Change in Ownership Exclusion.** The parent-child exclusion applies to a transfer of real property and generally does not apply to a transfer of interests in a legal

[17] Proposition 58 (November 4, 1986) for transfers of real property between parents and children and Proposition 193 (March 26, 1996) for transfers from grandparents to grandchildren.

entity. This is consistent with California Constitution article XIII A, section 2(h), and RTC section 63.1, which provide that a change in ownership does not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children, as defined by the Legislature, and the purchase or transfer of the first $1 million of all other real property between parents and their children. While this bill is consistent with the intent of the parent-child exclusion, it is more narrow in that qualified property is a parcel of land that must contain a principal residence and have an adjusted base year value that does not exceed $1 million. Conceivably, a parent could transfer $1 million of property individually under the parent-child exclusion and another $1 million indirectly via a legal entity under the exclusion proposed by this bill.

4. **Report to BOE.** This bill provides that a qualified property is a parcel of land that contains a principal residence and has an adjusted base year value that does not exceed $1 million. This bill requires county assessors to report to the BOE all transfers for which a claim for exclusion is made for qualified property pursuant to this proposed subdivision and the amount of each exclusion claimed.

   What is the purpose of requiring assessors report to the BOE on claims filed pursuant to proposed section 62(r)? This bill does not require that any claims be filed to receive the exclusion.

5. **Conflicting Language.** RTC section 63.1(c)(8) excludes legal entity interests from the definition of real property eligible for the parent-child exclusion. These amendments create an exclusion separate from the RTC section 63.1 exclusion.

6. **Different Laws apply to Legal Entity Ownership Interest Transfers.** Existing laws[18] prevent the parent-child exclusion from applying to a family farm homestead that includes a principal residence if the parents placed it into a corporation after they bought it and subsequently die. Thus, under this fact pattern, a family farm that includes the principal residence when passed down to the children after the parent's death will be reassessed to its current market value, despite the parent-child exclusion. This bill would allow the reversal of the reassessment of a small family homestead that has been the child's continuous place of residence, if the date of death occurs on or after the effective date of this bill.

7. **Legal Entity Ownership Interest Transfer Exclusions.** Currently, the following transfers of an interest in a legal entity are not subject to reassessment:

   - Transfer of legal entity interests that do not result in (1) a change in control or (2) cumulative transfers of more than 50 percent of original co-owner interests.[19]

[18] RTC sections 62(a)(2) and 64(d).
[19] RTC sections 64(a), 64(c)(1), and 64(d).

- Corporate reorganization, where all of the corporations involved are members of an affiliated group.[20]

- Transfer of legal entity interests solely between spouses or registered domestic partners.[21]

- Transfer of legal entity interests that results solely in a change in the method of holding title.[22]

This bill would create an additional exception from reassessment for a transfer of interest in a legal entity from parent to child, under certain circumstances.

8. **RTC Section 62 Change in Ownership Exclusions.** The exclusions currently enumerated in RTC section 62 apply to transfers of real property. This bill would create an exception in that it excludes from reassessment a transfer of an interest in a legal entity.

9. **Ambiguous Language.** RTC section 62 enumerates a list of transfers of real property excluded from change in ownership. This bill, however, states that a transfer of qualified stock is not a "change in ownership." Further, within existing property law, this language would mean excluded only from a change in ownership of a legal entity pursuant to RTC section 64(d) and would not apply to a change in control under RTC section 64(c)(1).

10. **Narrow in Scope.** Under this bill, the exclusion would apply only to corporations that were created between March 1, 1975 (the effective date of Proposition 13) and November 6, 1986 (the effective date of RTC section 63.1, which implements the parent-child exclusion). Thus, this exclusion would not apply to any other type of legal entity, such as a partnership or limited liability company. In addition, we note:

    - The only corporations that would qualify would be those corporations whose only stockholders are parents and their children. A corporation that has stockholders who are grandchildren or any other persons or family members would not qualify.

    - The only transfer that would qualify is one that occurs on the parent's date of death. Voluntary transfers of interest in a legal entity would not qualify.

    - This exclusion would not apply to a reverse situation. A transfer to a parent that occurs on a child's date of death would not qualify.

    - The exclusion applies only to a parcel that contains the principal residence; the exclusion would not apply to any other parcels owned by the qualified corporation that do not contain a principal residence.

[20] RTC section 64(b).
[21] RTC sections 63 and 62(p).
[22] Rule 462.180(d)(2).

Senate Bill 196 (Beall), Chapter 669
Low Value Exemption

Effective January 1, 2020.

Amends sections 75.11, 402.1, and 532 of, and adds section 214.18 to, the Revenue and Taxation Code.

Summary: This bill makes the following changes regarding real property owned by a community land trust (CLT):

- SB 196 provides that property owned by a CLT qualifies for the welfare exemption for a five-year period, if specified conditions are met.
  - This bill provides the exemption cannot be denied if the vacant land does not have a residential structure in the course of construction. Once a rental housing development is in the course of construction, this bill provides that the property qualifies for the welfare exemption.
  - This bill requires the community land trust to be liable for property tax for the years for which the property was exempt under these provisions if the property was not developed or rehabilitated, or at least in the process of being developed or rehabilitated:
    - By January 1, 2025, if the property was acquired by the CLT before January 1, 2020.
    - Within five years of the lien date following the date of acquisition by the community land trust, if the property was acquired by the CLT on and after January 1, 2020 and before January 1, 2025.

    Requires CLT to notify county assessor if exempt property is not in the course of construction by the applicable date, as specified above.
  - If the property becomes subject to property tax, this bill provides that supplemental and escape assessments are to be made within five years of the lien date following the date on which the property becomes subject to taxation.
  - This bill requires the State Board of Equalization (BOE) to annually collect data from county assessors regarding the exemption.
- SB 196 creates a rebuttable presumption that the sale or resale price of the dwelling or unit includes both the dwelling or unit and the land leased from a CLT on which the dwelling or unit is situated. This bill provides that any corrections of base year values or declines in value resulting from the application of this rebuttable presumption apply to all lien dates occurring after September 27, 2016.

Background: Community Land Trusts. Federal law, the Cranston-Gonzales National Affordable Housing Act (Act), allows CLTs to obtain organizational support, technical assistance, education, training, and community support from the government in fulfilling their housing mission.[23] The Act defines "CLT" to mean a community housing development organization not sponsored by a for-profit organization, with a specified board membership, that is established to carry out the following activities:

- Acquire parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;
- Transfer ownership of any structural improvements located on the leased parcels to the lessees; and
- Retain a preemptive option to purchase any structural improvement at a price determined by a formula designed to ensure that the improvement remains affordable to low and moderate income families in perpetuity.

CLTs are nonprofit organizations governed by a board of CLT residents, community residents and public representatives that provide lasting community assets and shared equity homeownership opportunities for families and communities. CLTs develop rural and urban agriculture projects, commercial spaces to serve local communities, affordable rental and cooperative housing projects, and conserve land or urban green spaces. However, the heart of their work is the creation of homes that remain permanently affordable, providing successful homeownership opportunities for generations of lower income families.[24]

CLTs provide an affordable housing model to help low- and moderate-income households that may not otherwise be able to purchase homes. The CLT acquires and develops properties for sale to income-qualified households, but then retains ownership of the underlying land and leases the land to the homeowner for a nominal fee through a long-term ground lease (usually a 99-year term). The home is, therefore, more affordable because the homeowner is only buying the building and leasing the land underneath. If the homeowner decides to sell the property, the home must be resold to another income-qualified household, and the original owner will only be eligible for a smaller share of its appreciated value. Since the CLT is the owner of the land, it will be a party to all future sales and enforce resale restrictions.

The National CLT Network publishes the *CLT Technical Manual* (2011) in which Chapter 17, "Property Tax Assessments," reviews the varied approaches used in the USA to assess resale-restricted homes.

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[23] 42 U.S.C. 12773

[24] https://groundedsolutions.org/strengthening-neighborhoods/community-land-trusts.

Welfare Exemption

Revenue and Taxation Code sections 75.11, 214.18, and 532

Former Law: Welfare Exemption. Existing law provides that low-income rental housing owned and operated by a qualifying nonprofit organization or a qualified claimant[25] may be exempt from property tax under the welfare exemption, provided various conditions and requirements are met. The law allows an unlimited exemption for rental housing owned by a nonprofit organization if it receives government financing or low-income housing tax credits.[26]

Lower Income Household Definition. Property tax law defines lower income households by cross reference to the Health and Safety Code (HSC).[27] In general, lower income households are those households with incomes that do not exceed 80 percent of the Area Median Income (AMI) adjusted for family size; income limits are established for all geographic areas of the state. The law also requires the California Department of Housing and Community Development (HCD) to annually publish these income limits based on data by the U.S. Department of Housing and Urban Development (HUD). Existing law[28] allows owners of low-income rental housing properties receiving federal low-income housing tax credits to continue to claim the property tax exemption on units occupied by tenants whose household income increases after move-in to a level above the lower income limit up to the federal law related limit of 140 percent of AMI, provided that the units remain rent-restricted.

Course of Construction. Section 5 of article XIII of the California Constitution was enacted in recognition of the fact that the welfare exemption as authorized under article XIII, section 4(b) did not apply to vacant, unused property held for a future qualifying use. Section 5 extends the exemption to buildings under construction, land required for their convenient use, and equipment in them if the intended use would qualify the property for exemption. Section 5 is implemented by RTC sections 214.1 and 214.2. RTC section 214.1 defines property used exclusively for religious, hospital or charitable purposes to include facilities in the course of construction, together with the land on which the facilities are located as may be required for their convenient use and occupation. RTC section 214.2 states that, as used in RTC section 214.1, "facilities in the course of construction" include the demolition or razing of a building with the intent to replace the building with a facility to be used exclusively for religious, hospital or charitable purposes. "Facilities in the course of construction" must have activity connected with the construction or rehabilitation of a new or existing building or improvement that results in physical changes visible to any person inspecting the site where the building or improvement is located.[29] As long as construction has commenced, the property will be considered "under construction" unless the construction is abandoned. However, if there is a delay in construction

[25] In addition to qualifying organization as defined in Property Tax Rule 136, a qualified claimant may also be a limited partnership in which the managing general partner is an eligible nonprofit corporation or eligible limited liability company.

[26] RTC sections 214(g)(1)(A) and 214(g)(1)(B).

[27] RTC section 214(g)(3)(A) and HSC section 50079.5. Additionally, the BOE annually reports the household income limits to assessors.

[28] RTC section 214(g)(2)(A)(iii). See Letter To Assessors No. 2017/055.

[29] Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions*, Part I, pages 27-28.

due to reasonable causes and circumstances beyond the property owner's control and that occurs notwithstanding the exercise of ordinary care and the absence of willful neglect, then the construction will not be considered abandoned.

Supplemental Assessment. A supplemental assessment is the difference between a new base year value established for a change in ownership or completion of new construction and the taxable value on the assessment roll. Depending on the time of year in which the event occurs, either one or two supplemental assessments may be generated for that event: one for the current roll (prorated for the portion of the year remaining after the event date), and one for the roll being prepared (for events that occur between January 1 and May 31). Generally, a supplemental assessment must be made within four years of July 1 of the calendar year in which the event occurred.[30] Existing law provides two exceptions to this four-year statute of limitations:

- Eight years in cases of concealment of personal property.[31]
- Eight years for an unrecorded change in ownership and a *Change in Ownership Statement* or a *Preliminary Change in Ownership Report* was not timely filed.[32]

Escape Assessments. An escape assessment is a retroactive assessment intended to rectify an omission or error that caused taxable property to be underassessed (or not assessed at all). In most cases, once such an omission or error occurs, the property escapes assessment each year thereafter until the underassessment is discovered and corrected. If property escapes assessment, the assessor is required to value the property upon discovery for the appropriate valuation date,[33] enroll the appropriate value on the roll being prepared, process any necessary corrections to the current roll, and process appropriate escape assessments for prior years within the statute of limitations. Under existing law,[34] the statute of limitations is generally four years, with the following exceptions:

- Eight years in cases of concealment of personal property.
- Eight years for an unrecorded change in ownership and a *Change in Ownership Statement* or a *Preliminary Change in Ownership Report* was not timely filed.
- No limitations period in cases of fraud.[35]
- No limitations period in cases of a change in ownership or change in control resulting from a transfer of an interest in a legal entity that owns real property if a *Statement of Change*

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[30] RTC section 75.11(d).
[31] RTC sections 502 and 504.
[32] RTC section 480 requires a *Change in Ownership Statement* must be filed with the county assessor within 90 days of the event date or, for a date of death, on or before inventory and appraisal is filed with the court clerk if property is subject to probate, or for all other cases arising from a date of death, within 150 days of date of death. RTC section 480.3 requires a *Preliminary Change of Ownership Report* must be filed with the county recorder concurrent with the recordation of any document evidencing a change in ownership.
[33] RTC section 531.
[34] RTC section 532.
[35] RTC section 503.

in Control or Ownership of Legal Entities was not timely filed with the State Board of Equalization as required by RTC sections 480.1 and 480.2.[36]

Amended Law: This bill provides that property owned by a CLT qualifies for the welfare exemption if all of the following conditions are met:

- The property is being or will be developed or rehabilitated as an owner-occupied single-family dwelling, owner-occupied unit in a multifamily dwelling, a member-occupied unit in a limited equity housing cooperative, or a rental housing development;
- Improvements are or will be available for use and ownership by qualified persons; and
- A deed restriction or other instrument serving as an enforceable restriction on the sale or resale value of owner-occupied units or the affordability of rental units is recorded. *RTC section 214.18(a)(1) through (3)*

Enforceable Restriction. This bill provides that a deed restriction or other instrument requiring a contract or contracts serving as an enforceable restriction on the sale or resale value of the owner-occupied units or on the affordability of rental units is recorded on or before the lien date following the acquisition of the property by the CLT. This bill defines "a contract or contracts serving as an enforceable restriction on the sale or resale value of the owner-occupied units or on the affordability of rental units" as a contract described in RTC section 402.1(a)(11). In addition, this bill requires a copy of the deed restriction or other instrument be provided to the county assessor. *RTC section 214.18(a)(3)*

Course of Construction. This bill provides that the welfare exemption cannot be denied to a property on the basis that the property does not contain a single-family dwelling, a unit in a multifamily dwelling, a unit in a limited equity housing cooperative, or a rental housing development that is in the course of construction. *RTC section 214.18(b)(1)*

This bill provides that a rental housing development that is in the course of construction qualifies for the welfare exemption. *RTC section 214.18(b)(2)*

This bill provides that "course of construction" has the same meaning as the term "facilities in the course of construction" is used and defined in RTC sections 214.1 and 214.2. *RTC section 214.18(c)(2)*

Community Land Trust. This bill provides that "community land trust" has the same meaning as provided in RTC section 402.1(a)(11)(B)(ii). *RTC section 214.18(c)(1)*

[36] For a transfer of interest in a legal entity, RTC sections 480.1 and 480.2 require a BOE-100-B, *Statement of Change in Control or Ownership of Legal Entities*, to be filed with the State Board of Equalization within 90 days of the event that triggered a change in control or change in ownership. See Letter To Assessors No. 2011/016 for more information on change in ownership of legal entities.

Qualified Person. For property developed for owner-occupied housing, this bill provides that "qualified persons" means persons and families of low or moderate income, including persons and families of low or moderate income that own a dwelling or unit collectively as member occupants or resident shareholders of a limited equity housing cooperative. "Persons and families of low or moderate income" has the same meaning as defined in HSC section 50093. For property developed for rental housing, this bill provides that "qualified persons" means persons and families of low income. "Persons and families of low income" has the same meaning as defined in HSC section 50079.5. *RTC sections 214.18(c)(4), (5), and (6)*

Rental Housing Development. This bill defines "rental housing development" as a rental housing development in which all of the residential units in the development, other than units provided to property managers, are required to be rented to and occupied by persons and families of low or moderate income, at rents that do not exceed an affordable rent, as described in HSC section 50053. *RTC section 214.18(c)(7)*

Five-Year Period to Rehabilitate or Develop Property. This bill specifies that the community land trust will be liable for property tax for the years for which the property was exempt if the property was not developed or rehabilitated, or at least in the process of being developed or rehabilitated:

- By January 1, 2025, if the property was acquired by the CLT before January 1, 2020.
- Within five years of the lien date following the date of acquisition by the community land trust, if the property was acquired by the CLT on and after January 1, 2020 and before January 1, 2025.

This bill requires the CLT to notify the county assessor if exempt property is not in the course of construction by the applicable date, as specified above. In these circumstances, this bill provides that supplemental and escape assessments are to be made within five years of the lien date following the date on which the property becomes subject to taxation. *RTC sections 75.11(d)(4), 214.18(d) and 532(b)(4)*

Effective Date. This bill becomes effective immediately. This bill specifies that section 214.18 is repealed on January 1, 2025. While this bill takes immediate effect, the exemption applies to:

- Lien dates January 1, 2020 through January 1, 2024, for property acquired by the CLT before January 1, 2020. *RTC section 214.18(e)(1)*
- First five lien dates following the date of acquisition by the CLT, regardless of the repeal of section 214.18, for property acquired on and after January 1, 2020 and before January 2025.

Data Collection. This bill requires the State Board of Equalization (BOE) to annually collect data from county assessors to quantify the amount of assessed value exempted and the number of owner-occupied dwelling units or rental units, or both, created by CLTs granted this exemption. This bill requires CLTs to provide information to county assessors about the additional housing created.

Legislative History: In 2017, Senate Bill 1056 (Beall) proposed amendments to the welfare exemption for community land trusts, similar to this bill. Senate Bill 1056 was held in the Assembly Appropriations Committee.

Commentary:

1. **Author's Comment.** Senate Bill 196 creates more permanent affordable housing for low- and moderate-income families by providing CLTs with a property tax exemption from the point of acquisition of property to the point of sale of affordable homes.

2. **Community Land Trust.** RTC section 402.1(a)(11) provides that an enforceable restriction includes a contract that is a renewable 99-year ground lease between a CLT and the qualified owner of an owner-occupied single-family dwelling or an owner-occupied unit in a multifamily dwelling.

3. **Effective Date.** The changes to the welfare exemption are effective for a five-year period beginning with the January 1, 2020 lien date and are repealed on January 1, 2025. Property currently owned by CLTs would become exempt for the 2020-21 through 2024-25 fiscal years. Property that is acquired by the CLT on or after January 1, 2020 and before January 1, 2025 would be exempt for the next five lien dates following the date of acquisition, regardless of the repeal of section 214.18.

4. **Vacant Land.** Generally vacant land does not qualify for the welfare exemption until construction has commenced. This bill sets a precedent in that it exempts vacant land owned by a CLT if the intended use would qualify.

5. **Deed or Other Instrument Restriction.** This bill provides that one of the conditions that must be met is a deed restriction or other instrument that enforceably restricts the sale or resale value of the owner-occupied units or the affordability of rental units is recorded on or before the lien date following the acquisition of the property by the CLT.

6. **Supplemental and Escape Assessment.** Property owned by a CLT will become assessable if that property has not been rehabilitated or developed, or is not in the process of being rehabilitated or developed:

   - By January 1, 2025 for property currently owned by a CLT, or

   - Within five years of the lien date following the acquisition of property purchased by a CLT between January 1, 2020 and December 31, 2024.

   This bill provides that supplemental and escape assessments are to be made within five years of the lien date following the date on which the property becomes subject to taxation (the lien date following the date of acquisition). From the date of acquisition, a CLT would have five years to at least commence construction to rehabilitate or develop that property. If construction has not begun on the fifth anniversary of that acquisition date, then the property becomes assessable on that date. From the lien date following that anniversary date, the assessor would have five years to value and enroll the escape assessments for the years previously exempt.

The methodology for counting the periods open under the statute of limitations for escape assessments is different than that for counting the limitations period open for supplemental assessments. Supplemental assessment limitations periods are counted forward from July 1 of the calendar year[37] in which the event occurred; the escape assessment limitations period is counted back from the date of enrollment.

For example, a CLT purchases real property, and a deed is recorded on November 15, 2020. To be exempt, the CLT must begin or complete construction by January 1, 2026. If construction has not at least begun by January 1, 2026, the CLT will be liable for property taxes on the January 1, 2026 lien date as follows:

- 2020-21 fiscal year – partial year December 1, 2020 through June 30, 2021
- 2021-22 fiscal year
- 2022-23 fiscal year
- 2023-24 fiscal year
- 2024-25 fiscal year
- 2025-26 fiscal year

Under this bill, an assessor would have five years from the January 1, 2027 lien date (i.e., the lien date following the January 1, 2026 lien date on which the property became subject to assessment) to issue a supplemental assessment for the portion of the 2020-21 fiscal year following the date of purchase. In other words, the assessor would have to enroll the supplemental assessment by January 1, 2032.

Additionally, an assessor would have five years from the January 1, 2027 lien date to issue escape assessments (must be enrolled by January 1, 2032) for the period during which the property was previously exempt. Escape assessments apply to the lien date and can be issued for years 2021-22, 2022-23, 2023-24, 2024-25, and 2025-26.

7. **Data Collection.** This bill requires the BOE to annually collect data from county assessors to quantify the amount of assessed value exempted and the number of owner-occupied dwelling units or rental units created by CLTs granted this exemption. This bill requires CLTs claiming this exemption to report to county assessors about the additional housing created. While the purpose of this data collection is to assist the Legislature in determining whether the exemption fulfills the goals, purposes, and objectives of this bill, there is no requirement for the BOE to report to the Legislature.

[37] RTC section 75.11 uses the term "assessment year," which is defined in RTC section 118 as the period between lien dates. Since the lien date is January 1, the assessment year is the same as the calendar year.

Valuation of Land – Use Restrictions

Revenue and Taxation Code Section 402.1

Former Law: **Fair Market Value of Enforceably Restricted Property.** Existing law requires the assessor to reassess property to its fair market value when sold (i.e., "change in ownership"). The law provides that the property's "purchase price" is rebuttably presumed to be its "fair market value."[38] 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.

Nonprofit-Imposed Restrictions. When determining a property's fair market value, existing law requires the assessor to consider the effect of legally enforceable property use restrictions, such as zoning or development limitations. Similarly, when determining land value, the law requires the assessor to consider the effect of enforceable restrictions on land use.[39]

In the case of a *nonprofit organization-imposed* use restriction, such as a CLT-imposed resale price restriction, the law generally prohibits the assessor from considering its negative value impact unless a specific statutory mandate exists.[40]

Currently, the law recognizes four non-governmental restrictions on value:

- Homes on land with a 30-year use restriction as owner-occupied housing available at affordable cost that are sold at cost to low-income families by qualifying nonprofit organizations[41] with no-interest financing (i.e., "silent second mortgage").[42]
- Land easements granted to nonprofit organizations to preserve and protect land in its natural state.[43]
- Greenway easements granted to nonprofit organizations to create paths along urban waterways.[44]
- Homes with CLT-imposed restrictions that have a renewable 99-year ground lease and limited equity due to resale price restrictions that are sold to low- and moderate-income buyers.[45]

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[38] RTC section 110(b).
[39] RTC section 402.1.
[40] *Carlson v. Assessment Appeals Board No. 1* (1985) 167 Cal.App.3d 1004.
[41] RTC section 214.15 – Added in 1999, by AB 1559, this law extends the welfare exemption to the following property owned by nonprofit organizations that sell homes to low income persons at cost with zero percent financing: (1) vacant land held for future construction and (2) homes under construction. No other property being developed as homes for sale to low income persons qualifies for a property tax exemption under the welfare exemption. Moderate income rental housing qualifies for the welfare exemption only if the housing is for seniors and the disabled and includes supportive services based on their special needs.
[42] RTC section 402.1(a)(10) – Added in 2015. HSC section 50052.5 defines "affordable housing cost."
[43] RTC section 402.1(a)(8)(A) – Added in 1993, but the law since 1984 via Civil Code section 815.10.
[44] RTC section 402.1(a)(8)(B) – Added in 2015.
[45] RTC section 402.1(a)(11)(A) – Added in 2016.

For purposes of this restriction, a CLT is defined in RTC section 402.1(a)(11)(B)(ii) as a nonprofit corporation organized pursuant to Internal Revenue Code section 501(c)(3) that satisfies all of the following:

- Has as its primary purpose the creation and maintenance of permanently affordable single-family or multifamily residences.
- All dwellings and units located on the land owned by the nonprofit corporation are sold to a qualified owner to be occupied as the qualified owner's primary residence or rented to persons and families of low or moderate income.
- The land owned by the nonprofit corporation, on which a dwelling or unit sold to a qualified owner is situated, is leased by the nonprofit corporation to the qualified owner for the convenient occupation and use of that dwelling or unit for a renewable term of 99 years.

Purchase Price Presumption. Existing law requires the assessor to reassess property from its prior Proposition 13-protected "base year value" to its fair market value when sold (i.e., a "change in ownership"). The law provides a rebuttable presumption that the purchase price paid in the transaction is the property's "fair market value" if the sale was an open market transaction, as specified.[46]

Long Term Leases. Existing law provides that the creation of a lease for a term of 35 years or longer triggers a change in ownership of the property subject to the lease.[47] This requires the assessor to reset the property's base year value.

Amended Law: **Purchase Price Presumption.** This bill creates a rebuttable presumption that the sale or resale price of the dwelling or unit includes both the dwelling or unit and the land leased from a CLT on which the dwelling or unit is situated. *RTC section 402.1(a)(11)(B)(i)*

Effective Date. While this bill takes immediate effect, any corrections of base year values or declines in value resulting from the application of this rebuttable presumption apply to all lien dates occurring after September 27, 2016. *RTC section 402.1(a)(11)(B)(ii)*

In General: **Other types of privately imposed restrictions.** The courts have held that the assessor may not consider any other privately imposed restriction that negatively impacts property value when determining fair market value for property tax purposes.[48] Thus, the assessor may not consider other use restrictions imposed by a nonprofit corporation, other than the four statutory exceptions enumerated above, or any private party that negatively impacts property value.

[46] RTC section 110(b).
[47] RTC section 61(c).
[48] *Carlson* v. *Assessment Appeals Board I* (1985) 167 Cal.App.3d 1004. See Letter To Assessors No. 85/111.

The BOE's Assessors' Handbook Section 501, *Basic Appraisal*, on page 50 reads:

> **Enforceable Contractual Land Use Restrictions.**
>
> Deed restrictions that restrict the uses of a property are not the same thing as governmentally-imposed restrictions discussed above. Deed restrictions are rights reserved by private persons as opposed to limitations imposed by government. In most cases, the property tax appraiser should not recognize deed restrictions when analyzing highest and best use. The rights to be assessed are the fee simple rights without encumbrances, subject only to the limitations imposed by government. A division of the fee simple rights would require a separate assessment on each portion, and the assessment of only one portion of the rights would result in the illegal exemption of the balance.

Assessors' Handbook Section 502, *Advanced Appraisal*, expands on this issue related to the identification of the property rights. Page 6 states:

> All appraisals involve the valuation of a set of defined property rights. With few exceptions, an appraisal for California property tax purposes involves the valuation of the entire fee simple estate unencumbered by any private interests (e.g., leases, liens, easements, etc.).[49] As a general rule, private parties cannot reduce the taxable value of their property by imposing private encumbrances upon it; only enforceable government restrictions under section 402.1 are recognized as limiting the full fee simple interest. Thus, Rule 2(a) provides, in part:
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>> When applied to real property, the words "full value," "full cash value," "cash value," "actual value," and "fair market value" mean the prices at which the unencumbered or unrestricted fee simple interest in the real property (subject to any legally enforceable governmental restrictions) would transfer for cash or its equivalent….
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> ***
>
> In some cases, the appraisal to be made is a partial, or fractional interest in the full fee simple interest, and the property rights appraised are, therefore, less than the full bundle of rights.[50] Taxable possessory interests; oil, gas, or mineral rights; air rights; transferable development rights; and—under certain conditions—water rights all represent cases where the property rights appraised are less than the full fee simple interest. Further, as discussed above, the rights associated with an easement may be valued and assessed separately under certain circumstances. This does not mean that a portion of the full

[49] Encumbrance: "Any right to, or interest in, land that may subsist [i.e., exist] in another to diminution of its value, but consistent with the passing of the fee. A claim, lien, charge, or liability attached to and binding real property; e.g., a mortgage; judgement lien; mechanic's lien; lease; security interest; easement or right of way; accrued and unpaid taxes." (Black's Law Dictionary, 5th edition, s.v. "encumbrance.")

[50] The full taxable fee simple interest in the property is still assessed.

taxable fee simple interest escapes taxation; the remaining rights are assessed to another owner.

Legislative History: Effective September 27, 2016, Assembly Bill 2818 (Stats. 2016, ch. 701) amended RTC section 402.1(a) to require assessors to consider recorded restrictions imposed by a CLT that negatively impact property value when determining the assessed value of homes that have a 99-year ground lease and limited equity due to resale price restrictions and that are sold to low- and moderate-income buyers.[51]

Commentary:

1. **Community Land Trust.** RTC section 402.1(a)(11) provides that an enforceable restriction includes a contract that is a renewable 99-year ground lease between a CLT and the qualified owner of an owner-occupied single-family dwelling or an owner-occupied unit in a multifamily dwelling.

2. **Change in Ownership.** Under current law, once a CLT sells a dwelling and transfers the leasehold interest to a qualified purchaser, the exemption ceases, and the property is reassessed. The creation, transfer, or termination of a leasehold interest with a term of 35 years or more is a reassessable change in ownership.[52] Additionally, if the conditions of RTC section 402.1(a)(11) are met, the assessor must consider the effect on value of any enforceable deed restrictions when assessing the underlying land.

3. **Compromise Language.** After the enactment of AB 2818 in 2016, BOE staff commenced the interested parties process to discuss proposed guidance on the assessment of CLT housing.[53] BOE staff met on multiple occasions with county assessors, CLT representatives, and other interested parties in a joint effort to develop uniform guidance on the application of the bill's amendments. Staff's position was that, consistent with the assessor's constitutional and statutory duty to assess all taxable property, the value of land and improvements of a CLT property must be determined separately.[54] CLT representatives consistently maintained that, despite the specific language in the purchase agreements, the purchase prices are intended to cover both the improvements and the land, while the lease payments are for administrative services that bear no relationship to the market value of the land. Continued discussion between BOE staff, county assessors, and CLT representatives resulted in the proposed clarifying amendments to section 402.1 that were amended into SB 196 on June 19, 2019 and September 3, 2019.

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[51] Letter To Assessors 2017/008.

[52] RTC section 61(c).

[53] All documents and comments related to this project are posted on the BOE's website at www.boe.ca.gov/proptaxes/assessment-of-community-land-trust-housing.htm.

[54] Language in AB 2818 that would have expressly provided that the purchase price of the improvements was presumed to be the value of the land *and* improvements was amended out of the bill in the May 31, 2016 version.

4. **Rebuttable Presumption.** This bill creates a rebuttable presumption that the sale or resale price of the dwelling or unit includes both (1) the dwelling or unit, and (2) the land leased from a CLT on which the dwelling or unit is located.

5. **Effective Date.** The proposed changes to RTC section 402.1 take effect immediately. However, this bill provides that the rebuttable presumption applies retroactively to all lien dates after September 27, 2016, the effective date of AB 2818.

Senate Bill 780 (Governance and Finance Committee), Chapter 329
Building Permits

Effective January 1, 2020.
Among others, amends section 72 of the Revenue and Taxation Code.
This bill analysis is limited to property tax-related provisions.

Summary: Extends the requirement to transmit to the county assessor copies of building permits and documents that show the date of completion of new construction to any entity that is authorized to issue a building permit.

Former Law: The California Constitution[55] provides that all property is taxable, unless otherwise provided by law. The Constitution limits the assessed value of property[56] upon which the property tax is imposed. Generally, the law establishes a property's assessed value at its market value on the date purchased (base year value) and requires additional assessments to reflect certain construction activities that qualify as "new construction." [57]

When substantial additions or alterations occur, the law requires the county assessor to increase the assessment to reflect the value of "newly constructed" property.[58] The county assessor assigns the assessable new construction with its own base year value, distinct from the remainder of the property. The remainder of the property's assessment is unaffected and retains its adjusted base year value.

Relevant to this bill, to aid county assessors in the discovery of new construction, existing law[59] requires any city, city and county, and county to provide the county assessor with copies of the following:

- Building permits issued, and
- Certificates of occupancy or other documents that show the date of completion of new construction.

Amended Law: This bill is the Local Government Omnibus Act of 2019. One of the changes extends the requirement of any city, city and county, and county to transmit to the county assessor (1) a copy of a building permit as soon as possible after the date of issuance, and (2) a copy of any certificate of occupancy or other documents that shows the date of completion of new construction within 30 days after the issuance or finalization, to any entity that is authorized to issue a building permit.

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[55] California Constitution article XIII, section 1.
[56] California Constitution article XIII A, section 2.
[57] Revenue and Taxation Code (RTC) section 110.1.
[58] RTC section 70.
[59] RTC section 72.

In General: California's Property Tax System. Voters changed California's property tax system through Proposition 13, which replaced a current market value-based system with an acquisition value-based system. Under Proposition 13, real property assessed values were set at 1975 market value levels. Future annual base year value adjustments were limited to the inflation rate, not to exceed 2 percent, for as long as the property's ownership remains unchanged and the property is not substantively improved (i.e., new construction). Proposition 13 also limited the basic property tax rate to 1 percent plus voter-approved bonded indebtedness. The current system provides certainty to property owners regarding future property tax liability. The 2 percent maximum inflation adjustment ensures modest assessed value increases, assuming no ownership changes or substantive property improvements.

New Construction. The California Constitution does not define the terms "new construction" or "newly constructed." RTC section 70 defines these terms to mean:

- Any addition to real property, whether land or improvements (including fixtures), since the last lien date.
- Any alteration of land or any improvements (including fixtures) since the last lien date that constitutes a "major rehabilitation" or that converts the property to a different use.

The BOE Assessors' Handbook Section 410, *Assessment of Newly Constructed Property*, provides detailed information.

Discovery of New Construction. Unlike a change in ownership for which transferees are required to file a change in ownership statement with the county assessor, property owners are not required to notify the county assessor of completed new construction. To aid county assessors in the effort to discover new construction, existing law[60] requires any city, city and county, and county to provide the county assessor with the following copies:

- All building permits issued as soon as possible after the date of issuance, and
- Certificates of occupancy or other documents that show the date of completion of new construction issued or finalized within 30 days after the date of issuance or finalization.

Additionally, when property owners file their approved building plans, existing law requires they provide the county assessor with a scale copy of floor plans and exterior dimensions for the assessor's use. [61]

Commentary:

1. **Sponsor's Comment.** RTC section 72 requires cities and counties to transmit to the county assessor copies of building permits and "other documents" that show the date of completion of new construction issued or finalized by a city or county. The California Assessors' Association notes that cities and counties are not the only agencies who issue

[60] RTC section 72(a) and (b).
[61] RTC section 72(c).

building permits in California, and that some challenges can occur in obtaining building permits from other agencies. The proposed amendments require any entity authorized to issue a building permit to the list of entities that are required to provide building permits to the county assessor.

2. **Building Permits.** Existing law requires any city, city and county, and county to transmit to the county assessor copies of building permits. However, city, city and county, and county entities are not the only government agencies that issue building permits in California.

Senate Bill 791 (Governance and Finance Committee), Chapter 333
Valuation of Certificated Aircraft

Effective September 20, 2019.

Amends section 441 of, amends and adds section 1152 of, adds sections 1153.5 and 1157 to, and repeals section 1153 of, the Revenue and Taxation Code.

Summary: Related to the property taxation of commercial air carriers,[62] this bill:

- Re-establishes the local centralized administrative procedures using a "lead county" system.
- Establishes a new formula for allocating the taxable value of certificated aircraft beginning with the 2020-21 fiscal year.[63]
- Changes the representative period for measuring aircraft presence in California for value allocation purposes.

Former Law: Under article XIII, section 1, of the California Constitution, all property is taxable and assessed at fair market value, unless otherwise provided by the California Constitution or the laws of the United States. Section 2 of article XIII authorizes the Legislature to provide for property taxation of tangible personal property. Certificated aircraft used by air carriers are tangible personal property, subject to taxation when in revenue service in California.

Until December 31, 2016, the law[64] specified an aircraft valuation methodology that assessors had to use, based on the lowest of trended acquisition cost less depreciation, wholesale prices listed in the *Airliner Price Guide* (APG), a commercially published "blue book" value guide, less 10 percent, or original price paid. In addition, assessors and commercial air carriers were allowed to streamline administrative procedures by using a "lead county" system. This allowed commercial air carriers operating in multiple California counties to file a single consolidated property statement (tax return) with a designated “lead” county. The lead county calculated the total unallocated fleet value of the air carrier’s certificated aircraft for each make, model, and series and transmitted the calculated fleet value to the other counties. To assess the aircraft, each county determined its allocated portion of the calculated fleet value based on the flight data for its particular county. The allocation process limited each county’s assessment to reflect the aircraft's physical presence in that county. The valuation methodology and the lead county administrative procedures expired on December 31, 2016.

[62] Commercial air carriers include both passenger airlines and freight delivery services.
[63] Certificated aircraft means certificated aircraft per RTC section 1150 and scheduled air taxi operators per RTC section 1154(a) and (b).
[64] RTC section 401.17.

Due to the expiration of the valuation methodology, county assessors may use any valid method (cost, income, comparable sales, published market value guides) to determine fair market value.[65]

Representative Period. Related to the value allocation process, current law requires the Board of Equalization (BOE) to designate the period to measure aircraft presence in California after consulting with assessors annually.[66] Since 1997, the BOE has selected various weeks in the month of January.

California Assessors' Association Aircraft Advisory Subcommittee (CAA Subcommittee). Created in 1965,[67] this Subcommittee typically meets twice a year. Its members consist of county assessor staff with certificated aircraft assessment expertise. A BOE staff member generally attends the meetings. Additionally, the Subcommittee dedicates a portion of each meeting to confer with airlines on assessment issues.

Amended Law:

Property Statements. This bill requires a commercial air carrier whose certificated aircraft is subject to property taxation to file with the lead county assessor's office one signed property statement for its personal property and fixtures at all airport locations. This bill also provides that each commercial air carrier may file one schedule for all of its certificated aircraft with situs in California, and requires that flight data be reported for the entire state and segregated by county and airport. Additionally, ground time at each airport must be reported on a summary basis by fleet type. *RTC section 441(m) and new section 1152(c)*

Allocation Formula. This bill provides that the current allocation formula applies to fiscal years before the 2020-21 fiscal year. *RTC section 1152*

New Allocation Formula. This bill creates a new allocation formula to be used by each assessor the proportionate amount of time, both in the air and on the ground, that certificated aircraft have spent in California during the 12-month period from January 1 – December 31 of the previous year immediately preceding the lien date. For this allocation formula, SB 791 provides the following definitions:

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[65] RTC section 110 defines "fair market value" as the "amount of cash … that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other … "

[66] RTC section 1153 and Property Tax Rule 202(f).

[67] In 1965, the Subcommittee was formed to decide on a method to allocate aircraft values; there was no law specific to aircraft value allocation. Assembly Revenue and Taxation Committee, Volume 4, Number 22, *A Study of Aircraft Assessment in California* (January, 1968), page 9. Effective August 13, 1968, AB 1257 (Stats. 1968, p. 2460) added Article 6 (commencing with RTC section 1150), to establish the procedure for allocating the value of certificated aircraft and air taxis to California taxing agencies.

- "Time in the air" consists of flight time and taxi time within California's borders and must be based on BOE's "California Standard Flight Times" table in the most recently published Letter To Assessors (LTA)[68] that addresses intrastate and interstate standard flight times.
- "Ground time" is all time in California that is not flight or taxi time.
- "Time allocable to each airport" is the amount of time a certificated aircraft or scheduled air taxi is on the ground at the airport, plus the airport's portion of incoming and outgoing flight time.

Aircraft Representative Period. This bill eliminates the BOE's duty to designate an aircraft representative period. *RTC section 1153*

CAA Aircraft Advisory Subcommittee. This bill requires the CAA Subcommittee to annually designate, by March 1, a lead county assessor's office for each commercial air carrier operating certificated aircraft in California. Every third year thereafter, the CAA Subcommittee must redesignate a lead county assessor's office for each of these carriers, unless an air carrier and its existing lead county assessor's office concur to waive this redesignation. *RTC section 1153.5(a)*

Lead County Requirements. This bill requires a lead county assessor's office to do the following:

- Send written notification to each commercial air carrier to which that assessor is designated.
- Receive the property statement of each commercial air carrier to which that assessor is designated.
- Calculate an unallocated value of the certificated aircraft of each commercial air carrier to which that assessor is designated.
- Electronically transmit the following:
    - To the assessor of each county in which the aircraft has situs, the unallocated values calculated for those aircraft.
    - To the assessor of each affected county, the flight data required to compute the allocation, received from commercial air carriers.
- Lead the audit team when that team is conducting an audit of a commercial air carrier to which that assessor is designated. *RTC section 1153.5(b)*

Audits. This bill requires an audit of a commercial air carrier once every four years on a centralized basis by an audit team of auditor-appraisers from at least one, but not more than three counties as determined by the Subcommittee. An audit is to include all California personal

[68] For example, see LTA No. 2018/066.

property and fixtures of the air carrier on behalf of each county for which an audit would otherwise be required.[69] *RTC section 1153.5(d)*

Emergency Regulations. This bill requires the BOE, after consultation with the California Assessors' Association and representatives of commercial air carriers, to enact emergency regulations and produce forms and instructions necessary to implement the allocation formula. *RTC section 1157*

In General: **Business Personal Property.** All property, real and personal, is subject to property tax, unless a specific constitutional or statutory exemption applies. Generally, taxability is determined on the lien date, which is January 1 of each year. The Constitution allows the Legislature to exempt or provide for differential taxation of any personal property with a 2/3 vote.

Personal property used in a trade or business is taxable. Proposition 13's valuation limitations do not apply to business personal property. Consequently, the law requires the assessor to determine its current fair market value every year as of January 1. Mass appraisal techniques generally are necessary given the enormity of this task. To aid in the task, the law requires property owners to annually report their personal property holdings with an aggregate acquisition cost of $100,000 or more on a business property statement.[70]

The assessor determines the fair market value of most business personal property using the property's acquisition cost. The assessor multiplies acquisition cost by a price index (an inflation trending factor based on acquisition year) to estimate reproduction cost new. Next, the assessor multiplies reproduction cost new by a percent good factor (from BOE-issued percent good tables) to estimate depreciated reproduction cost (reproduction cost new less depreciation). The assessor uses the reproduction cost new less depreciation value as the property's taxable value for the fiscal year. The personal property tax rate is the same as the real property tax rate, which is 1 percent plus voter approved indebtedness in the locality. The BOE's Assessors' Handbook Section 504, *Assessment of Personal Property and Fixtures*, provides more detailed guidance.

Certificated Aircraft. Certificated aircraft used by air carriers is subject to taxation when in revenue service in California. Generally, certificated aircraft are commercial aircraft operated by air carriers for passenger or freight service. California law[71] defines "certificated aircraft" as:

> [A]ircraft operated by an air carrier or foreign air carrier engaged in air transportation, as defined in Section 40102(a)(2), (5), (6), and (21) of Title 49 of the United States Code, while there is in force a certificate or permit issued by the Federal Aviation Administration, or its successor, authorizing such air carrier to engage in such transportation.

[69] RTC section 469.
[70] RTC section 441.
[71] RTC section 1150.

Certificated aircraft are valued under a "fleet" concept. This means that the assessed value basis is not the value of any single aircraft owned by an air carrier, but rather the value of *all* aircraft of each type that is flown into the state. Aircraft regularly fly in and out of California and the various California counties with major airports; typically no single or particular aircraft remains located in the state on a permanent basis. Under the "fleet" concept, aircraft types that have gained situs in California by their entry into revenue service in this state are valued as a fleet, while only an allocated portion of the entire fleet's value is ultimately taxed to reflect actual presence in California's counties. Under the federal Due Process and Commerce Clauses, personal property taxes on these aircraft must be fairly allocated.

Centralized System - One Return/One Audit. Prior to December 31, 2016, the law[72] allowed commercial air carriers operating in multiple California airports to file a single consolidated property statement (tax return) with a designated "lead" county. This former law outlined the process for the CAA Subcommittee, after soliciting input from the airlines, to select a lead county for each air carrier.[73] The selected county notified the air carrier it would serve as the lead county, and each air carrier filed its annual tax return with that lead county. The tax return detailed necessary information about the air carrier's property holdings (both certificated aircraft and other business personal property and fixtures) that were subject to property tax in California. The lead county transmitted return information related to non-aircraft personal property and fixtures to other relevant counties where the air carrier operates. The law required an audit team directed by the lead county to audit the air carriers. These laws were repealed on December 31, 2016.

Lead County Calculates Fleet Value. Prior to December 31, 2016, the lead county calculated the total unallocated fleet value of the air carrier's certificated aircraft for each make, model, and series, and transmitted the calculated fleet value to the other counties, as described below.[74] To assess the aircraft, each county determined its allocated portion of the calculated fleet value based on the flight data for its particular county. The allocation process limited each county's assessment to reflect the aircraft's physical presence in that county. These provisions were repealed on December 31, 2016.

Aircraft Valuation Methodology. Prior to December 31, 2016, the law required that pre-allocated fair market value would be the lowest of:

- Trended acquisition cost less depreciation,
- Wholesale prices listed in the APG less 10 percent, or,
- Original price paid.

[72] Subdivision (m) of RTC section 441 was repealed on December 31, 2016.
[73] RTC section 1153.5 was repealed on December 31, 2016.
[74] RTC section 401.17 was repealed on December 31, 2016.

The resulting value was rebuttably presumed to be correct. After the 2016-17 fiscal year, these provisions were no longer effective. Currently, assessors value aircraft at the "fair market value," as generally provided under Property Tax Law, using any valid approach to value.

The Fleet Concept - Example. A hypothetical individual air carrier, Blue Sky Airlines, operates the following aircraft types in its overall fleet: Boeing 737-300s and 737-500s; Boeing 747-400s; and Boeing 767-200s and 767-300s. Each of these aircraft types (Boeing 737, 747, 767) is considered to be a fleet type. Thus, Blue Sky Airlines may have a fleet of 100 Boeing 737-500s, but only 30 of those aircraft make any contact in Sacramento County during the year. For purposes of property taxation in Sacramento County, the full cash value of all 100 of Blue Sky Airline's Boeing 737-500 aircraft is determined and then the computed allocation ratio is applied to that value.

Valuation and Allocation. For fiscal years 2005-06 to 2016-17, the law detailed the assessor's assessment methodology for determining the market value of commercial airline-owned certificated aircraft. The law provided an allocation formula to determine the frequency and the amount of time that an air carrier's aircraft makes contact and maintains situs within a county. Property Tax Rule 202 provides further explanation of the allocation procedure. The allocation ratio is made up of two components: (1) a ground and flight time factor, which accounts for 75 percent of the ratio, and (2) an arrivals-and-departures factor, which accounts for 25 percent of the ratio. The sum of these two factors yields the allocation ratio, which is applied to the full cash value of a fleet of a particular aircraft type operated by an air carrier to arrive at the assessed value calculation for that aircraft type. The sum of the assessed allocated values for each make and model used by an air carrier results in the total assessed value of the aircraft for that air carrier for a particular county.

Representative Period. Related to the value allocation process described above, the law requires the BOE to designate the period to measure aircraft presence in California after consulting with assessors annually. The law is silent regarding the details of the representative period to be designated. The law specifies that the allocation formula will be based on an air carrier's ground and flight time (i.e., "time in state") weighted 75 percent, and arrival and departures activity weighted 25 percent. Since 1997, when the lien date changed from March 1 to January 1, the BOE has selected various weeks from the month of January. Specifically, the BOE has designated the first week of January nine times, the second week five times, the third week three times, and the fourth week twice. In 1998, a week was selected that started on December 28, and included the lien date.

Background: **Settlement Agreement.** Prior to January 1, 1999, California law did not specify an assessment methodology for valuing certificated aircraft, or for valuing the carrier's taxable possessory interest in the publicly owned airport in which the aircraft operated. In 1997-98, a group of counties and air carrier industry representatives met to resolve property tax issues associated with air carrier-owned and -used property. The end result was a written settlement agreement to dispose of outstanding litigation and appeals over the valuation of airport possessory interest assessments and certificated aircraft. The Legislature codified the settlement agreement in a three-piece package:

- **Aircraft Valuation Methodology and Monetary Settlement.** AB 1807 (Stats. 1998, ch. 86) outlined the valuation procedures for certificated aircraft during a six-year period and provided $50 million in tax credits against future tax liabilities, as well as extensive uncodified legislative findings and declarations.

- **Airport Possessory Interests.** AB 2318 (Stats. 1998, ch. 85) specified the assessment methodology for valuing the air carrier's taxable possessory interest in publicly-owned airports.

- **Tax Credits.** SB 30 (Stats. 1998, ch. 87) added general purpose provisions to allow counties and taxpayers to enter into written settlement agreements granting taxpayers tax credits.

Centralized System and Valuation Refinements. From January 1, 2006 to December 31, 2016, AB 964 (Stats. 2005, ch. 699) established the centralized administrative procedure for air carriers and counties using the lead county system. AB 964 also added a new valuation methodology and specified that the lead county would calculate total unallocated fleet value. The new methodology refined and built upon the first valuation methodology as follows:

- **Aircraft Types.** It distinguished between passenger aircraft (main-line jets or regional jets) and freighter aircraft (production or converted).

- **Variable Components.** It added detail for the variable components. To calculate a reproduction cost new less depreciation value indicator (i.e., the historical cost basis) each variable component was addressed; specifically: (1) acquisition cost, (2) price index, (3) percent good factor, and (4) economic obsolescence.

- ***Airliner Price Guide*.** It changed the prices used in the APG from the average of retail and wholesale prices to the wholesale price and additionally provided a 10 percent discount from the wholesale price to recognize that air carriers generally receive a fleet discount not reflected in the guide's listed wholesale prices.

- **Economic Obsolescence Adjustment.** It added detailed procedures to make economic obsolescence adjustments to capture significant market value changes (such as occurred after 9/11) due to severe airline industry economic condition changes.

Another written settlement agreement between counties and airlines accompanied AB 964. The agreement provided airlines with tax credits worth $25 million. Additionally, the parties agreed not to pursue embedded software issues until after the 2010-11 fiscal year. The agreement extended the valuation methodology for use in the 2004-05 fiscal year, a period not otherwise covered in the statute due to the sunset.

In 2009, AB 311 (Ma), as introduced, would have made the valuation methodology and centralized provisions permanent and, as amended, would have extended the effective date. However, Governor Schwarzenegger vetoed AB 311 because one airline disagreed with extending the valuation methodology, and the timing of the sunset allowed another year for all the parties to reach consensus before the provisions sunset.

In 2010, AB 384 (Stats. 2010, ch. 228) extended these provisions to the 2015-16 fiscal year and extended the repeal date provisions to December 31, 2015. In addition, AB 384 changed the valuation provisions as follows:

- **Rebuttable Presumption of Correctness.** Expressly provided that the fair market value of certificated aircraft determined using the specified assessment methodology only enjoys a *rebuttable* presumption of correctness. Previously, the methodology-produced value was deemed to be the aircraft's fair market value.

- **Evidence for Rebutting Presumption.** Specified that the pre-allocated aircraft fair market value produced using the delineated methodology may be rebutted by evidence including, but not limited to, appraisals, invoices, and expert testimony.

- **Original Cost - Maximum Value for Original Owner.** Provided that the value of an individual aircraft assessed to the original owner of that aircraft is not to exceed its original cost from the manufacturer.

The maximum value cap provision was added to appease the airline that opposed AB 311 in the prior year. In calculating total fleet values, this provision requires the county to substitute the original price paid when it is lower than wholesale price less 10 percent for any individual aircraft in the fleet. This reduces the total fleet value for any airline able to purchase new planes at deeper discounts.

In 2015, AB 1157 (Stats. 2015, ch. 440) extended the sunset date for one year allowing use for the 2016-17 fiscal year.

In 2016, two bills were introduced that related to the property taxation of commercial air carriers.

1. AB 2622 (Nazarian) would have extended the aircraft valuation methodology provisions and streamlined administrative procedures for counties and airlines that were due to sunset on December 31, 2016. AB 2622 died on the Senate inactive file.

2. SB 1329 (Hertzberg) would have extended for one year the aircraft valuation methodology provisions and streamlined administrative procedures for counties and airlines that were due to sunset on December 31, 2016. SB 1329 died on the Assembly inactive file.

Representative Period. In 2013, the California Assessors' Association requested that the BOE consider changing the representative period for certificated air carriers and scheduled air taxi operators. At that time, two periods were suggested: the second or third week of December or the second week of March. Air carriers were opposed to any change. BOE staff commenced the interested parties process and ultimately concluded that the representative period should not change from the week in January, as had been the process since 1999, because there wasn't a compelling reason at that time.

In 2017, the BOE restarted the interested parties process regarding the representative period. Initially, BOE staff recommended one week in October 2017 as the representative period for the

2018 lien date, based on an analysis of 32 years of data on monthly sales of jet fuel in California. After consulting with assessors and industry, BOE staff recommended that the BOE adopt a multi-year phase-in plan, concluding with a 365-day representative period. Parties were not able to come to an agreement for the representative period, and the BOE adopted the week of January 14-20, 2018 as the representative period and directed staff to initiate the interested parties process in 2018.

In 2018, the BOE continued the interested process regarding a possible transition to a 365-day representative period based on data derived from each carrier's activity in the prior year. Parties were not able to come to an agreement for the 2019 representative period, and the BOE adopted the week of January 13-19, 2019 as the representative period.

BOE State Assessment of Aircraft. In 2005, AB 964 (J. Horton) initially proposed transferring assessment responsibility for commercial air carriers from the local county assessor to the BOE. Those provisions were amended out of the bill on May 26, 2005. In 2003, SB 593 (Ackerman) also proposed transferring these assessments to the BOE. The Senate Appropriations Committee held the bill in committee. In 2004, the California Performance Review Report recommended to Governor Schwarzenegger that the BOE assess commercial airline-owned aircraft to address certain inefficiencies, which were subsequently mitigated in 2005 by AB 964's new centralized lead county system. In 2015, SB 661 (Hill) as introduced proposed transferring assessment jurisdiction for commercial air carrier personal property, including certificated aircraft, to the BOE using the existing valuation methodology for certificated aircraft. This bill was held in the Assembly.

Commentary:

1. **Certificated aircraft valuation is complex and contentious.** A statutory methodology had been in place for 17 years and helped reduce some conflict. While prior statutory methodologies had not eliminated conflict, they have narrowed its scope. As noted in the legislative findings and declarations of both AB 1807 and AB 964 (see above), the certificated aircraft assessments are a difficult and contentious property tax assessment issue that has given rise to litigation and appeals. The findings noted the Legislature's need to address the uncertainty because of the disruption to both airline industry tax planning and local government and school finance.

2. **Valuation Methodology.** The prior valuation methodology of certificated aircraft, in effect for fiscal years 2005-06 through 2016-17 and described in RTC section 401.17, was repealed on December 31, 2016. This bill does not specify a valuation methodology for certificated aircraft.

3. **How have aircraft been valued historically?**

    - **Trended Cost.** Before 1998, assessors based aircraft values on trended costs pursuant to the RTC 110 fair market value standard and Assessors' Handbook guidelines on personal property assessments.

- **Blue Book – Average Wholesale and Retail Prices.** Between 1998 and 2004, assessors based aircraft values on the average wholesale and retail APG value pursuant to RTC section 401.15.

- **Blue Book – Wholesale Prices Less 10 Percent.** Between 2005 and 2010, assessors based aircraft values at the lower of (1) trended cost or (2) wholesale APG value less 10 percent pursuant to RTC section 401.17.

- **Blue Book – Wholesale Prices Less 10 Percent and Original Owner Exception.** Between 2010 and 2015, pursuant to RTC Section 401.17, assessors based aircraft values at the lowest of (1) trended cost, (2) wholesale APG value less 10 percent, or (3) original cost, but only if the aircraft was still owned by the original owner. Most air carriers currently have an assessment based on the wholesale price less 10 percent, as that method produces the lowest value.

4. **New Allocation Formula.** This bill adds new section 1152 and provides a calculation in subdivision (e) that all time, both in the air and on the ground, that certificated aircraft have spent within the state prior to the aircraft's first entry into revenue service must be excluded from the time-in-state factor. However, "total time" as used in section 1152(a) is not defined. Further, the "time-in-state factor" is not explicitly defined in new section 1152.

5. **Time in Air Calculation - Technical.** This bill defines "time in air" as flight time and taxi time within California's borders. This is to be based on the BOE's "California Standard Flight Times" table as most recently published in an LTA. SB 791 states that these standard times are to be multiplied by the number of departures to and from the airports listed in the LTA.

6. **Lead-county fleet value calculation ensures statewide consistency in the base valuation of the fleet.** Before the centralized procedures, air carriers contended that although counties used the same assessment methodology, the fleet value calculations differed. Counties countered that the value discrepancies could be traced to (1) differences in the air-carrier-reported-information provided to different counties and (2) audit-related changes resulting from an individual county audit.

7. **The lead county system promotes administrative efficiency for both air carriers and counties.**

    - **One Return.** This eliminates any airline-reporting discrepancies to counties. Since air carriers may report all information to a single county, which is then distributed, all counties can receive the same information. This also reduces airline tax return compliance costs by eliminating duplicative reporting. Non-aircraft personal property must still be identified by tax rate area to ensure that local jurisdictions receive their share of property tax revenue for property located within their boundaries.

- **One Audit.** This limits the airline to a single audit by one multi-county audit team and reduces auditing costs incurred by both counties and air carriers for duplicative audits.

8. **This bill will provide more certainty and predictability in the valuation of aircraft for both assessors and commercial air carriers.** Absent a codified allocation methodology, the values determined by each individual county assessor may be the same, higher, or lower than they would be without this bill.

TABLE OF SECTIONS AFFECTED

SECTIONS	ACTION	BILL NUMBER	CHAPTER NUMBER	SUBJECT
Revenue and Taxation Code				
§62	Amend	AB 872	685	Change in ownership exclusion for transfer of corporation stock
§72	Amend	SB 780	329	Building permits
§75.11	Amend	SB 196	669	Community land trust – supplemental assessment statute of limitations
§155.20	Amend	AB 608	92	Low value exemption
§214.18	Add	SB 196	669	Community land trust – welfare exemption
§253	Amend	AB 46	9	Veterans' exemption
§402.1	Amend	SB 196	669	Community land trust – land use restriction
§441	Amend	SB 791	333	Valuation of certificated aircraft – property statement
§532	Amend	SB 196	669	Community land trust – escape assessment statute of limitations
§1152	Amend	SB 791	333	Valuation of certificated aircraft – allocation formula (fiscal years prior to 2020-21)
§1152	Add	SB 791	333	Valuation of certificated aircraft – allocation formula (2020-21 fiscal year and thereafter)
§1153	Repeal	SB 791	333	Aircraft representative period
§1153.5	Add	SB 791	333	Valuation of certificated aircraft – lead county administrative procedures
§1157	Add	SB 791	333	Valuation of certificated aircraft – emergency regulations