California State
Board *of* Equalization

Legislative Bill Analysis

Senate Bill 734 (Rubio)
Date: March 21, 2023 (Amended)
Program: Property Taxes
Revenue and Taxation Code 107.10
Effective: Immediately

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Summary: This bill would add section 107.10 to the Revenue and Taxation Code (RTC). The provision provides that there is no independent possession or use of land or improvements if the possession or use is for a tenancy in a residential unit in a publicly owned housing project by a low-income household that is rented at affordable rents.

Fiscal Impact Summary: This bill would result in an estimated revenue loss of $3.1 million per year.

Existing Law: Article XIII, section 1, of the California Constitution requires that all property be taxed unless otherwise provided by the California Constitution or the laws of the United States. Section 3 of article XIII of the California Constitution allows publicly owned affordable housing projects to be exempt from property taxation.

Possessory interests in real property are deemed to be real property for property tax purposes. Revenue and Taxation Code (RTC) section 107 sets forth the three essential elements that must exist to find that a person's use of publicly owned tax-exempt property rises to a level of taxable possessory interest. Those elements are (1) independence, (2) durability, and (3) exclusivity.

Concerning the element of independence, RTC section 107(a)(1) defines "independent" to mean "the ability to exercise authority and exert control over the management or operation of the property or improvements, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the property or improvements. A possession or use is independent if the possession or operation of the property is sufficiently autonomous to constitute more than a mere agency."[1]

Relevant case law and Property Tax Rule 20 additionally require that a possessor derive "private benefit." "Private benefit" means "that the possessor has the opportunity to make a profit, or to use or be provided an amenity, or to pursue a private purpose in conjunction with its use of the possessory interest. The use should be of some private or economic benefit to the possessor that is not shared by the general public."

Health and Safety Code (HSC) section 50079.5 defines "lower income households" as "persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937."

[1] California Code of Regulations, Title 18, section 20. Property Tax Rule 20 specifies that "[t]o be sufficiently autonomous to constitute more than a mere agency, the possessor must have the right and ability to exercise significant authority and control over the management or operation of the real property, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the real property."

In General: In certain instances, a property tax assessment may be levied when a person or entity uses publicly owned real property that, with respect to its public owner, is either immune or exempt from property taxation. These uses are commonly called "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 determine the existence of taxable possessory interests. Generally, those determinations are made according to the facts and circumstances in each case.

Proposed Law: This bill would add section 107.10 to the Revenue and Taxation Code. This section would state that there is no independent possession of the land or improvements if certain conditions are met specifying the use of the property as governmental housing assistance programs and/or associated management.

Background: This law would exempt low-income households living in publicly owned housing projects from receiving a possessory interest assessment. Without this exemption, persons living in these properties could face a financial burden that contradicts the concept of affordable housing as incurring property tax assessments would add a financial burden to the tenants. The BOE has had the long-standing opinion that low-income housing tenants should not be assessed for their possessory interest use in government owned property. This bill codifies that opinion.

This bill would potentially create a state-mandated program, potentially creating a revenue loss for local governments, as no appropriations are allocated for any property tax losses.

Commentary:

1. **Exclusive to Tenants?** Would SB 734 apply to the administrator’s interest in the project notwithstanding the tenants’ interest? In other words, would this bill treat administrators of public housing projects similar to certain contractors of miliary housing pursuant to RTC section 107.4?

2. **Current tenants who do not qualify as low-income.** Would a possessory interest be calculated for these non-qualifying units? If so, a County Assessor would be required to issue billing to the tenants of these units. This would require tracking and additional workload for the Assessors, and possibly unexpected bills for tenants.

3. **Backfill.** While this bill provides statutory provisions to reimburse local governments should it be determined by the Commission of State Mandates, the bill currently contains no appropriations to reimburse local governments for the loss of property tax revenues. However, the California Constitution requires reimbursement to local governments for costs mandated for the state. This could cause a significant budgetary impact on local governments and schools.

Costs: The costs for BOE implementation of this bill would be approximately $48,100 the first year, and on-going costs of $20,000 per year. These costs include staff costs for reviewing Letters To Assessors, interested parties meetings, and legal reviews.

Revenue Impact: In analyzing this proposal, staff concentrated on the low-income housing segment. A couple of assumptions became the foundation of the revenue estimate calculation. The California Statewide Communities Development Authority (CSCDA) website states they have acquired and converted more than 7,700 units for low- and middle-income tenants. Assuming rent of $1,500 per month, average length of stay and expenses, the result is a possessory interest value of $40,000.

To estimate the total existing lower income units exempted from possessory interest assessment, the above calculated $40,000 value per unit was multiplied by the 7,700 units. Staff estimated the total exemption to be $308 million ($40,000 × 7,700 units). At the one percent property tax rate, annual property tax revenue loss is estimated at $3.1 million ($308 million × 1%).

Qualifying Remarks

It should be noted that the above revenue analysis does not include future developments, hence this revenue impact may be understated.

In order to understand or gain insight on the revenue impact of this bill, staff used the CSCDA data as a starting point. The 7,700 units may not be reflective of the overall population; hence, this revenue estimate may be understated.