



# California State Board *of* Equalization

## LEGISLATIVE BULLETIN

### PROPERTY TAX LEGISLATION 2023

Legislative, Research & Statistics Division



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## FOREWORD

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

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

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



# 2023 PROPERTY TAX LEGISLATION

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# Assembly Bill 84 (Ward) – Chapter 734

## Welfare Exemption: Affordable Housing

**Effective October 11, 2023**

### **Amends Revenue and Taxation Code sections 214 and 259.15**

**Summary:** This bill amends Revenue and Taxation Code (R&TC) section 214 to expand the type of financing eligible for “welfare exempt” property to include qualified 501(c) (3) bonds.

The bill extends R&TC provisions governing when a unit shall be treated as occupied by a lower-income household when tenant income increases; however, unlike Low-Income Housing Tax Credit (LIHTC) or Community Land Trust (CLT) administered properties, the bill treats units in this category as no longer low-income when the occupant’s income increases to 100 percent of AMI, adjusted for family size, (not 140 percent).

The bill amends R&TC section 259.15 to require a property owner claiming a “partial exemption” for non-LIHTC/CLT properties to file an affidavit with specified information—when a tenant’s income increases to specified levels, including the percentage of AMI and provides that the affidavit is not subject to public disclosure.

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

**Existing Law:** Under the California Constitution, all property is taxable unless otherwise provided for by the State Constitution or the laws of the United States.<sup>1</sup> The Legislature may exempt from property taxation in whole or in part property used exclusively for religious, hospital, scientific, or charitable purposes and owned or held in trust by nonprofit corporations or other entities if specific criteria are met.<sup>2</sup>

This exemption is known as the “welfare exemption” and is implemented according to [R&TC section 214](#).<sup>3</sup>

Section 214 generally exempts from taxation, subject to certain conditions and qualifications, property (1) owned by nonprofit organizations organized and operated for charitable purposes and (2) used exclusively for those purposes.

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

The BOE and 58 County Assessors jointly administer the welfare exemption. The BOE is responsible for determining whether an organization is organized and operating for exempt purposes, which qualifies the organization for either an Organizational Clearance Certificate (OCC) or a Supplemental Clearance Certificate (SCC). The County Assessor is responsible for determining whether using a qualifying organization’s property is eligible for the welfare exemption. The County Assessor shall not grant the welfare exemption for an organization’s

<sup>1</sup> California Constitution, [Article XIII, section 1](#).

<sup>2</sup> California Constitution, [Article XIII, section 4\(b\)](#).

<sup>3</sup> All statutory references are to the Revenue and Taxation Code (R&TC), unless otherwise provided.

property unless the organization holds either a valid OCC or SCC issued by the BOE. However, the County Assessor may deny a welfare exemption claim based on non-qualifying use of the property, notwithstanding that the BOE has issued the organization an OCC or SCC. The BOE tracks [eligible nonprofit organizations and limited liability companies](#) that hold valid OCCs and SCCs and monitors those organizations for continued eligibility.

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

Under existing property tax law, properties that meet these requirements and are used exclusively for rental housing, including related facilities, are entitled to a “partial exemption,” equal to that percentage of the value of the property that is equal to the percentage that the number of units serving lower-income households represents of the total number of residential units, in any year that specific criteria apply. These criteria include that the property be subject to a legal restriction that provides that units designated for use by lower-income households are continuously available to or occupied by lower-income households at rents not exceeding specified limits.<sup>4</sup>

**Proposed Law: Expands Welfare Exemption.** This bill expands the welfare exemption for low-income rental housing in two ways:

1. Allows an over-income tenant of 100 percent AMI to be treated as occupied by a lower-income household if the owner of the property is subject to an enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document consistent with the requirements of [R&TC section 214\(g\)\(2\)\(A\)\(iii\)](#). While the tenant must initially qualify for the housing with an AMI of 80 percent or below, the bill allows the tenant to stay if they do not exceed 100 percent. This provision will only be operative fiscal year 2024-25 through fiscal year 2028-29.
2. Makes properties financed with qualified 501(c)(3) bonds eligible for the exemption.

**501(c)(3) Bonds.** This bill defines these bonds as that term is defined in [Section 145 of Title 26 of the United States Code](#). Qualified 501(c)(3) bonds are tax-exempt qualified private activity bonds issued by a state or local government, the proceeds of which are used by a 501(c)(3) organization to continue their mission and exempt purpose.

**Form Requirement.** The bill would require a claim for a welfare exemption pursuant to this requirement to be accompanied by an affidavit containing specified information regarding the units for which the exemption is claimed and would provide that the affidavit is not subject to public disclosure.

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

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

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<sup>4</sup> Section 214, subdivision (g)(1).

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

**Charitable Purposes.** An organization's primary purpose must be either religious, hospital, scientific, or charitable. Whether its operations are for one of these purposes is determined by its activities. The State Supreme Court has broadly construed the charitable purpose aspect of the welfare exemption to include a wide range of activities which benefit the general public.<sup>5</sup> The term "charitable" is not confined to the relief of poverty but includes numerous humanitarian activities, rendered at cost or less, the object of which is the care of the physical and mental well-being of the recipients.

**Exclusive Use.** The R&TC does not specifically define the term *used exclusively*; however, the courts have done so in a series of decisions. The Supreme Court has stated that the phrase "exclusively used" may not be given a literal interpretation to mean that the property exempted must be used solely for the purposes stated to the total exclusion of any other use. The Supreme Court held that used exclusively for exempt purposes includes any property which is *used exclusively* for any activity which is incidental to and reasonably necessary for the accomplishment of the exempt purpose.<sup>6</sup> Courts have applied this precedent to mean that a qualified organization's primary use of its property must be for exempt purposes, and any other uses of property must be related to and reasonably necessary for the accomplishment of the exempt purpose.<sup>7</sup>

**Housing Welfare Exemption.** Property tax administrators have historically taken a narrow view of the exemption. They have viewed most housing as non-exempt because the property is used primarily for private residential purposes rather than exempt purposes and is not used exclusively for exempt purposes as required by section 214.<sup>8</sup>

However, the courts have taken a broader view, consistent with the Supreme Court's directive that statutory and constitutional provisions granting exemptions are to be construed strictly but reasonably.<sup>9</sup>

In 1999, the BOE adopted [Property Tax Rule 137](#), *Application of the Welfare Exemption to Property Used for Housing*, effective December 31, 1999. Rule 137 clarifies that the welfare exemption applies to housing and related facilities owned and operated by qualified nonprofit organizations and establishes a single uniform statewide standard for determining qualification for the welfare exemption as it applies to such properties.<sup>10</sup>

In addition, [Property Tax Rule 140](#), *Welfare Exemption Requirements for Low-Income Housing Properties*, further specifies requirements for the welfare exemption for low-income housing properties.

<sup>5</sup> *Stockton Civic Theatre v. Board of Supervisors* (1967) 66 Cal.2d. 13.

<sup>6</sup> *Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 736.

<sup>7</sup> *Honeywell Information Systems, Inc. v. County of Sonoma* (1974) 44 Cal.App.3d 23; *YMCA v. County of Los Angeles* (1950) 35 Cal.2d 760; *St. Germain Foundation v. County of Siskiyou* (1963) 212 Cal.App.2d 911; *Greek Theatre Association v. County of Los Angeles* (1978) 76 Cal.App.3d 768.

<sup>8</sup> Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions*, p. 62.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Id.* at p. 65.

**Background:** Commencing with fiscal year 2018-19, [Assembly Bill \(AB\) 1193](#) (Stats. 2017, ch. 756) extended the low-income housing property tax exemption to a rent-restricted unit occupied by an over-income tenant (up to 140 percent of AMI) who was income-qualified at first occupancy, as long as the property receives federal low-income housing tax credits (LIHTC). Proponents of AB 1193 stated that deed or regulatory restrictions generally prohibited the owner of these properties from evicting tenants for being over-income or increasing the over-income tenants' rent. Additionally, units with over-income tenants continued to qualify as lower-income units for tax credit purposes; however, owners would lose their property tax exemption on them, creating financial hardship. Assembly Bill 1193 is currently set to sunset in fiscal year 2027-28.

**Commentary:**

1. **100 Percent AMI.** This bill creates a new 100 percent AMI category to track for a specific type of qualifying tax credit versus the 140 percent threshold allowed for LIHTC and CLT credits. This could prove difficult for tracking purposes.

**Costs:** The BOE would incur base year costs of approximately \$29,053 and ongoing costs of approximately \$5,530 per year to update claim forms: [Assessors' Handbook Section 267](#), *Welfare, Church, and Religious Exemptions*; and [Publication 149](#), *Property Tax Welfare Exemption*.

**Revenue Impact:** According to BOE 2022 data, more than five thousand nonprofit entities have been issued SCCs concerning the welfare exemption for affordable housing. Neither this BOE data nor data reported by counties provide any specifics in relation to assessed value and income groups of low-income non-tax-credit projects; therefore, it is difficult to determine the number of entities, properties, or units that would additionally qualify for the expansion allowing tenants to stay in low-income housing up to 100 percent of AMI.

Additionally, BOE has no data available regarding how many existing 501(c)(3) bond-financed projects will be exempt if the bill is passed. Therefore, based on these unknown factors, the revenue loss is indeterminable.



## Assembly Bill 556 (Gallagher)—Chapter 443

### Property Tax: Base Year Value Transfer—Disaster Relief

Effective October 8, 2023

#### Amends Revenue and Taxation Code section 69

**Summary:** This bill amends R&TC section 69 to allow victims of the 2018 Camp Fire an additional three years to apply the base year value of a property that was substantially damaged or destroyed to a replacement property.

**Existing Law:** For property tax purposes, the law requires County Assessors to reassess real property from its Proposition 13 protected value "base year value" to its current market value whenever a change in ownership occurs or upon completion of new construction (Article XIII A, section 2 of the California Constitution).

Exceptions to this reassessment requirement have been enacted, including two base year value transfers for property owners whose property has been damaged or destroyed in a disaster for which the Governor proclaimed a state of emergency. Related to this bill, R&TC section 69 provides tax relief to persons who own property substantially damaged or destroyed in a Governor-proclaimed disaster. Among the various requirements and conditions, the base year value of the damaged property may be transferred to a comparable property located within the same county and purchased or newly constructed within five years of the disaster's occurrence.

Although AB 556 isn't proposing to amend R&TC section 70.5, it provides for the reconstruction of a damaged or destroyed property on the same location.

**Proposed Law:** This bill would extend the 5-year period described above by three years if a property was substantially damaged or destroyed by the 2018 Camp Fire on or after November 1, 2018, but on or before November 20, 2018, for those who elect to purchase a comparable replacement property within the same county.

**General:** California's system of property taxation under Article XIII A of the California Constitution (Proposition 13) values the property at its 1975 fair market value, with annual increases after that limited to the amount of inflation or two percent, whichever is less, until the property changes ownership or new construction occurs. Once a reassessable event occurs (for example, a change in ownership or new construction), the property's value for tax purposes is redetermined based on its current market value. The value initially established, or redetermined where appropriate, is called the "base year value."

Because real estate values generally appreciate at a rate greater than two percent per year, when an event triggers a reassessment of property to its current market value, the reassessed value (for example, its new base year value) will likely be substantially higher.

California property tax law provides for various situations where the base year value of a property is either (1) retained, notwithstanding that new construction has taken place or that the property has changed ownership, or (2) transferred to another property, notwithstanding that the property has changed ownership. These special situations are provided pursuant to various constitutional amendments modifying the original Proposition 13 framework and serve to avoid the otherwise required reassessment of a property to its current market value.



R&TC section 69 provides that persons who own property substantially damaged or destroyed in a Governor-proclaimed disaster may transfer the base year value of that property to a property acquired or newly constructed as a replacement if it is acquired within five years after the disaster.<sup>11</sup> “Substantially damaged” means physical damage amounting to more than 50 percent of its current market value immediately before the damage. Base year value transfers are available for all property types, with the limitation that the original property and the replacement property must be of the same property type: residential, commercial, agricultural, or industrial. The replacement property is “comparable” if it is similar in size, utility, and function to the destroyed property and if the market value of the acquired property does not exceed 120 percent of the fair market value of the replaced property in its pre-damaged condition. Property owners may, nevertheless, still receive disaster relief in cases where the value of the replacement property exceeds the 120 percent limitation. The amount over this threshold is assessed at full market value and added to the transferred base year value.

**Governor State of Emergency Proclamations:** The Government Code<sup>12</sup> authorizes the Governor to proclaim a state of emergency under specified circumstances, including:

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

**Background:** In 1993, AB 1824 (Stats. 1993, ch. 1053) extended the timeframe for R&TC section 69 base year value transfers from two years to three years for all disasters occurring on or after October 20, 1991, the date of the Oakland Hills fire. In 1997, Senate Bill (SB) 594 (Stats. 1997, ch. 941) provided a special five-year timeframe for any victim of the 1994 Northridge earthquake. In 2006, AB 1890 (Stats. 2006, ch. 317) extended the timeframe for R&TC section 69 base year value transfers from three years to five years for all disasters occurring after July 1, 2013, when several devastating fires swept through Southern California.

AB 2013 (Stats. 2020, ch. 124) provided R&TC section 70.5, allowing similar benefits to R&TC section 69 for those electing to reconstruct similar improvements on an existing property instead of purchasing a replacement property.

AB 1500 (Irwin) is a proposed bill to amend R&TC section 70.5 to allow victims of both the Camp Fire and the Woolsey Fire an additional three years to receive a base year value transfer for comparable reconstructed improvements to a destroyed or damaged property.

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<sup>11</sup> Proposition 50 of 1986 authorized this base year value transfer provision.

<sup>12</sup> Government Code (GC) sections 8558 and 8625.

**Commentary:**

**1. Fiscal Year 2018-19. Amends R&TC section 69 Exclusively.** This bill only amends R&TC section 69 and applies only to those purchasing replacement property. It does not extend R&TC section 70.5 base year value transfers to those electing to reconstruct improvements on a currently owned property. The author may consider increasing the time allowed to reconstruct the existing site under R&TC 70.5.

**Costs:** The administrative costs related to this bill would be a one-time cost of approximately \$28,000 and ongoing costs of approximately \$6,000 per year. These costs would be incurred by BOE for a Letter to Assessors, updating materials, and legal reviews.

**Amended Revenue Impact:** According to the National Low-Income Housing Coalition, an estimated 14,200 homes were destroyed in the 2018 Camp Fire. The Butte County Assessor reports that approximately 10,035 of those homes have either been sold, are currently up for sale, homeowners have left California, or the property did not otherwise qualify for relief. As of May 2023, the actual number of homes eligible for this relief is 4,165. The average assessed value of a home in Butte County in 2018 receiving the homeowners' exemption was \$215,288. The California Association of Realtors February 2023 median home price in the county was \$405,000. Therefore, where the transfer is granted, the estimated assessed value difference per home is \$189,712 (\$405,000- \$215,288). The one percent property tax rate amounts to \$1,897 per home (1% × \$189,712).

Based on the assumption that all the estimated 4,165 homeowners would need additional time to purchase a comparable replacement property within the same county, the estimated annual revenue loss is \$7.9 million (4,165 homes × \$1,897).

**Qualifying Remarks:** The revenue estimate assumes that all property owners with damaged or destroyed property would purchase a replacement property instead of rebuilding improvements on the existing property, as this bill only amends R&TC section 69 and applies only to those purchasing replacement property. It does not extend R&TC section 70.5 base year value transfers to those electing to reconstruct improvements on a currently owned property.

It should also be noted that if passed, related legislation (AB 1500) would reduce this estimate as some may choose to reconstruct the damaged property. The Butte County Assessor reports that the average assessed value per home could be reduced by as much as one-third, as land value is not reassessed in those cases.

This revenue estimate does not account for any changes in economic activity that may or may not result from the enactment of the proposed law.



# Assembly Bill 1361 (Hoover)—Chapter 473

## Property Taxation: Disabled Veterans' Exemption: Preliminary Application

Effective January 1, 2024

### Amends Revenue and Taxation Code section 205.5

**Summary:** This bill would allow a County Assessor to provide a written or electronic determination of preliminary eligibility for the disabled veterans' tax exemption authorized under Revenue and Taxation Code (R&TC) [section 205.5](#).

**Summary of Amendments:** The June 20, 2023, amendment states the Legislature's intent to support disabled veterans with information, particularly with respect to 100 percent disabled veteran property tax exemptions, when the veteran is seeking to purchase a home. The measure adds further legislative intent that the veteran will have more purchasing power by eliminating property taxes paid at closing that are not owed and will later be reimbursed by providing county assessors with new authority to provide written preliminary eligibility of the exemption earlier in the home-buying process.

The May 18 amendments struck proposed R&TC section 253.3 in its entirety, which would have authorized specific procedures for a disabled veterans' preliminary application and instead allows a County Assessor to provide written or electronic determination of preliminary eligibility for the disabled veteran's tax exemption.

**Fiscal Impact Summary:** No revenue impact.

**Existing Law:** The California Constitution<sup>1</sup> provides that all property is taxable unless otherwise provided by law. The California Constitution provides an exemption for disabled veterans who are rated 100 percent disabled or are being compensated at the 100 percent rate due to unemployment.

**Disabled Veterans' Exemption.** R&TC section 205.5 exempts fully or partially from property tax, the principal place of residence of a veteran that is owned by the veteran, the veteran's spouse, or jointly by the veteran and the veteran's spouse, if the veteran because of injury or disease incurred in military service, is blind in both eyes, has lost the use of two or more limbs, or is totally disabled. The exemption also applies to property that is owned by, and is the principal place of residence of, the unmarried surviving spouse of a deceased veteran if the deceased veteran qualified for the exemption during the veteran's lifetime or if the veteran died from a disease that was service-connected as determined by the United States Department of Veterans Affairs (USDVA). This exemption is commonly referred to as the "disabled veterans' exemption."

R&TC section 277<sup>2</sup> requires that anyone claiming the disabled veterans' exemption must file a claim with the County Assessor and provide any information required by the Board. This information shall include, but shall not be limited to, the name of the person claiming the exemption, the person's social security number or another personal identifying number, the address of the property, and a statement to the effect that the claimant owned and occupied the property as the claimant's principal place of residence on the lien date, or that the claimant intends to own and

<sup>1</sup> California Constitution Article XIII, section 1.

<sup>2</sup> R&TC section 277

occupy the property as the claimant's principal place of residence on the next succeeding lien date, and proof of disability as defined by section 205.5. Currently, a disabled veteran must have a disability rating of 100 percent or are being compensated at the 100 percent rate due to unemployability to be eligible for the exemption; no partial exemption is allowed for a rating less than 100 percent.

**Proposed Law:**

**Preliminary Eligibility for Exemption.** This bill adds a new subsection (j) to R&TC section 205.5 to authorize a County Assessor to provide written or electronic determination of preliminary eligibility for the disabled veteran's tax exemption authorized under R&TC 205.5.

**In General:**

**Disabled Veterans' Exemption.** California law provides a qualified disabled veteran, or their unmarried surviving spouse may apply for the disabled veterans' exemption to reduce the assessed value of their principal residence. Exemption eligibility provisions require that the claimant obtain a USDVA disability rating that either (1) rates the veteran's disability at 100 percent, or (2) rates the veteran's disability compensation at 100 percent because the veteran is unable to secure and maintain gainful employment.

The law also allows unmarried surviving spouses to receive the exemption if the spouse's death was service-connected. In the case of a service-connected death, to be eligible for the exemption, surviving spouses must receive a USDVA determination that the spouse's death was service-connected. A USDVA determination is necessary for (1) active-duty personnel deaths (for example, the service person was not a "veteran"), and (2) veterans without a 100 percent rating when alive, but whose cause of death is deemed service-connected. Surviving spouses of veterans continue to receive the exemption after the veteran's death, so long as they do not remarry.

The law provides two levels of exemption, depending upon the claimant's income. For the 2023-24 fiscal year, the basic exemption adjusted for inflation will be \$161,083. However, if the claimant's income is less than \$72,335, the exemption amount will be \$241,627. For the 2022-23 assessment year, 68,114 disabled veterans, or their unmarried surviving spouses were granted the disabled veterans' exemption.

**Commentary:**

1. **Related Legislation.** [SB 82](#) (Seyarto) provides that the County Assessor shall accept an electronically generated letter of service-connected disability, in lieu of an original letter of service-connected disability, at the discretion of the claimant, for purposes of verifying eligibility for an exemption. For a 10-year period, [SB 726](#) (Archuleta) proposes to add another disabled veterans' exemption in lieu of the existing exemption.

**Costs:** In relation to the writing of a Letter to Assessors and the posting of the letter to the website, the BOE would incur costs of approximately \$1,051.

**Revenue Impact:** No direct impact.

Rev. July 2024

# Assembly Bill 1500 (Irwin) – Chapter 583

## Property Tax: Disaster Relief

Effective October 8, 2023

### Amends Revenue and Taxation Code section 70.5

**Summary:** This bill amends R&TC section 70.5 to allow property owners an additional three years to reconstruct improvements on the property substantially damaged or destroyed by the 2018 Woolsey Fire and the 2018 Camp Fire.

**Fiscal Impact Summary:** AB 1500 would reduce annual property tax revenues by an estimated \$30.2 million if every property owner elected to rebuild property damaged or destroyed in the fires, and the property owner also needed an additional three years to reconstruct the improvements. This approximate figure should be considered a maximum loss.

**Existing Law:** For property tax purposes, the law requires County Assessors to reassess real property from its Proposition 13 protected value "base year value" to its current market value whenever a change in ownership or new construction occurs.<sup>17</sup> R&TC section 70.5 allows owners of the property substantially damaged or destroyed in a Governor-proclaimed disaster to reconstruct comparable property onsite with a return to the former property's base year value if they elect to rebuild instead of purchasing replacement property.

To be comparable, the reconstructed property must be similar in size, utility, and function. Property is considered similar in "size and utility" if its full cash value doesn't exceed 120 percent of the full cash value of the property before damage or destruction. If the value does exceed 120 percent, partial relief is available. To qualify for relief under section 70.5, the reconstruction must be completed within five years of the date of the disaster.

**Proposed Law:** This bill would extend the 5-year period described above by three years if the property was substantially damaged or destroyed by the 2018 Woolsey Fire or by the 2018 Camp Fire on or after November 1, 2018, but on or before November 30, 2018, for those who elect to reconstruct comparable improvements on their existing property.

**Effective Date.** This bill became effective immediately upon signature.

**In General:** California's system of property taxation under Article XIII A of the California Constitution (Proposition 13) values the property at its 1975 fair market value, with annual increases after that limited to the amount of inflation or two percent, whichever is less, until the property changes ownership or new construction occurs. Once a reassessable event occurs (for example, a change in ownership or new construction), the property's value for tax purposes is redetermined based on its current market value. The value initially established, or redetermined where appropriate, is called the "base year value."

<sup>17</sup> Article XIII A, section 2 of the California Constitution.

Because real estate values generally appreciate at a rate greater than two percent per year, when an event triggers a reassessment of property to its current market value, the reassessed value (for example, its new base year value) will likely be substantially higher.

California property tax law provides for various situations where the base year value of a property is either (1) retained, notwithstanding that new construction has taken place, or that the property has changed ownership, or (2) transferred to another property, notwithstanding that the property has changed ownership. These special situations are provided pursuant to various constitutional amendments modifying the original Proposition 13 framework and serve to avoid the otherwise required reassessment of a property to its current market value.

For instance, related to the subject matter of this bill, R&TC section 70(c) provides that where the property has been damaged or destroyed by misfortune or calamity, the property will retain its previous assessed value after its reconstruction as long as such reconstruction is substantially equivalent to the property before damage or destruction.<sup>18</sup> Consequently, a rebuilt property after a fire will continue to be assessed at the same amount even though the property has been entirely newly constructed.

R&TC section 70.5 added a new provision specific to post-disaster reconstruction following a Governor-proclaimed event. These provisions allow a base year value to be reinstated for reconstructed improvements if those improvements are similar in function, size, utility, and within 120 percent of value to qualify for a base year value transfer. These provisions parallel the intracounty base year value transfer under R&TC section 69 to provide similar benefits to those who elect to rebuild. This section also states that if the reconstruction exceeds 120 percent of value, the amount that exceeds 120 percent is added to the factored base year value.

**Governor State of Emergency Proclamations.** The Government Code<sup>19</sup> authorizes the Governor to proclaim a state of emergency under specified circumstances, including:

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

**Commentary:**

- 1. Amends R&TC section 70.5 Exclusively.** This bill only amends R&TC section 70.5 and applies only to property owners who reconstruct substantially damaged or destroyed improvements. It does not extend the base year value transfer period under R&TC section 69 for property owners who elect to purchase a replacement property.

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<sup>18</sup> This new construction exclusion was provided by Proposition 8 in 1978.

<sup>19</sup> Government Code (GC) sections [8558](#) and [8625](#).

**2. Piecemeal Amendments.** This bill allows extension of relief only for owners of the property substantially damaged or destroyed by the 2018 Woolsey Fire or the 2018 Camp Fire. In 2018, the Governor issued a state of emergency for 14 fires, including the Woolsey Fire and the Camp Fire. In 2019, the Governor issued a state of emergency for seven other fires and other disaster events. With this bill specifically limiting this relief extension to the Woolsey Fire and Camp Fire, this may lead to subsequent amendments of R&TC section 70.5 for other specific events.

Using the intracounty base year value relief as an example, when section 69 was added to the R&TC, replacement property had to be purchased within two years of the date of the disaster. In 1993, AB 1824 (Stats. 1993, ch. 1053) extended the timeframe for R&TC section 69 base year value transfers from two years to three years for all disasters occurring on or after October 20, 1991, the date of the Oakland Hills fire. In 1997, SB 594 (Stats. 1997, ch. 941) provided a special five-year timeframe for any victim of the 1994 Northridge earthquake. In 2006, AB 1890 (Stats. 2006, ch. 317) extended the timeframe for R&TC section 69 base year value transfers from three years to five years for all disasters occurring after July 1, 2013, when several devastating fires swept through Southern California.

**3. Related Legislation.** AB 556 (Gallagher) proposes to amend R&TC section 69 to extend the five-year period for intercounty base year value transfers for property substantially damaged or destroyed by the 2018 Camp Fire.

**Costs:** The administrative costs related to this bill would be a one-time cost of approximately \$28,000 and ongoing costs of approximately \$6,000 per year. These costs would be incurred to drafting Letters to Assessors, updating materials, and legal reviews.

**Revenue Impact:** According to the National Low-Income Housing Coalition (NLIHC), an estimated 14,000 homes were destroyed in the 2018 Camp Fire, which is within the boundaries of Butte County. The average assessed value of a home in Butte County in 2018 receiving the homeowners' exemption was \$215,288. The California Association of Realtors (CAR) February 2023 median home price in the county is \$405,000. Therefore, where the transfer is granted, the estimated assessed value difference per home is \$189,712 (\$405,000 - \$215,288). The one percent property tax rate is \$1,897 per home (1% × \$189,712).

Based on the assumption that the homeowners of the estimated 14,000 homes destroyed in the 2018 Camp Fire would need additional time to reconstruct the property, the estimated annual revenue loss is \$26.6 million (14,000 homes × \$1,897).

According to NLIHC, an estimated 1,000 homes were destroyed in the 2018 Woolsey Fire which was located near the boundaries of Los Angeles and Ventura counties. The average assessed value of a home in Ventura County in 2018 receiving the homeowners' exemption was \$442,708. The CAR February 2023 median home price in the county is \$805,000. Therefore, where the transfer was granted, the estimated assessed value difference per home is \$362,292 (\$805,000 - \$442,708). The one percent property tax rate is \$3,623 per home (1% × \$362,292).

Based on the assumption that the homeowners of the estimated 1,000 homes destroyed in the 2018 Woolsey Fire would need the additional time to reconstruct, the estimated annual revenue loss is \$3.6 million (1,000 homes × \$3,623).

AB 1500 would reduce annual property tax revenues by an estimated \$30.2 million, in adding the expected losses for the 2018 Camp Fire and the 2018 Woolsey Fire.

**Qualifying Remarks:** When preparing the revenue analysis, the staff had no data on the number of homeowners needing the additional three years to reconstruct. The above analysis assumes that all homeowners affected would seek an additional three years.

An assumption made is that every fire victim who had a home damaged or destroyed elects to rebuild on their property instead of purchasing replacement property. Hence, this estimate should be viewed as the maximum annual revenue loss.

In addition, [AB 556](#) is a similar bill. If passed, it may reduce the revenue impact of this bill, as some property owners may elect to buy replacement property instead of rebuilding improvements on an existing property.

This revenue estimate does not account for any changes in economic activity that may or may not result from the enactment of the proposed law.





## Senate Bill 1528 (Gipson)—Chapter 766

### Property Tax: Housing Authorities—Nonprofit Public Benefit Corporations

Effective January 1, 2024

#### Amends Health and Safety Code section 34400

**Summary:** This bill amends Health and Safety Code (HSC) section 34400 to extend the exemption from taxation for property owned by a housing authority to property owned by a nonprofit public benefit corporation controlled by a public housing authority (PHA).

**Fiscal Impact Summary:** This bill is estimated to have an indeterminable revenue loss.

**Existing Law:** Article XIII, section I of the California Constitution, and R&TC section 201 provide that all property in this state, not exempt under the laws of the United States or of this state, is subject to taxation. The general rule of taxability is subject to numerous exemptions, which are largely set forth in section 3 of Article XIII. Of relevance to this bill, section 3(b) provides that property owned by local government is exempt from taxation. The Housing Authorities Law establishes housing authorities within each county and city with the purpose of undertaking activities related to affordable housing. HSC section 34400 states that property held by PHAs is exempt from taxation.

**Proposed Law:** This bill would amend HSC section 34400 to state that property held by a nonprofit public benefit corporation controlled by a PHA would be included in the exemption for public entities if the following criteria are met:

- The nonprofit public benefit corporation is organized for purposes pursuant to the Housing Authorities Law and is solely directed and managed by directors, officers, or employees of the housing authority.
- The organizational documents of the nonprofit public benefit corporation contain provisions that in the event of the liquidation, dissolution, or winding up of the nonprofit public benefit corporation, all assets of the nonprofit public benefit corporation revert to ownership by the housing authority.

**In General:** Legislation has been enacted which specifically exempts properties owned by certain nonprofit corporations, which corporations are solely owned by local governments. See R&TC sections 201.1, 201.3, and 201.4. Those statutes provide that property owned by the nonprofit corporations shall be deemed to be property owned by the local governments, and hence, such property is exempt from property taxation. However, the relevant statutes are entity-specific.

**Public Housing Authorities.** The Housing Authorities Law creates PHAs as “corporate and politic public bodies exercising public and essential governmental functions.” PHAs are independent public entities created by state law and generally funded by the federal government. PHAs administer Federal Section 8 Housing vouchers and occasionally also own and manage low-income properties. HSC section 34400 states that property owned by a PHA is tax-exempt.

**Nonprofit Public Benefit Corporations.** Some PHA's have subsidiary nonprofit branches. The U.S. Department of Housing and Urban Development provides guidance on how these must operate. They must have their assets, operations, and management legally and effectively controlled by the PHA. These are instruments to manage PHA's property more cost-efficiently.

**Possessory Interest.** 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.

R&TC 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.

**Commentary:**

- 1. Exempt from Taxation.** This bill is unclear as to what type of taxation to which the bill is referring. R&TC sections 201.1, 201.2, 201.3, and 201.4 provide specific property tax exemptions for property owned by a nonprofit entity that is owned by local government. If the author is seeking a property tax exemption, the author may want to consider adding a section to Article I, chapter 1, part 2, division 1 of the R&TC, which implements Article XIII, section 3.
- 2. Property Tax Exemption for Property Not Publicly Owned.** Property not publicly owned is eligible for a property tax exemption under certain circumstances. To be exempt for property tax purposes, the real property must be owned by a qualified 501(c)(3) corporation and used for a specified exempt purpose (see R&TC section 214 et seq.). In addition, as mentioned above, there are three other code sections specifically for nonprofit entities owned by local governments.
- 3. Possessory Interest.** Exempt property that is exclusively used by a person or entity other than the government agency may be subject to a possessory interest tax.
- 4. Constitutional Issue.** The amendment of a Health and Safety Code may not be able to expand an exemption under the R&TC without making changes to the R&TC code as well.

**Costs:** To implement AB 1528, the BOE estimates a one-time cost of approximately \$12,000.

**Revenue Impact:** The revenue impact of AB 1528 will be an indeterminable loss. The objective of the bill is to clarify existing law, for example, that property held by a nonprofit public benefit corporation that is controlled by a PHA is included in the existing exemption from taxation in HSC Section 34400. At the time of preparing this analysis, it has been reported that several properties in Los Angeles County have received tax bills for over \$3 million. It is unknown if any other nonprofit public benefit corporation has been receiving possessory interest assessments; if so, this bill would result in the additional loss of those revenues.

# Senate Bill 82 (Seyarto) – Chapter 773

## Property Tax: Service-Connected Disability

Effective January 1, 2024

### Amends Revenue and Taxation Code section 205.5

**Summary:** Provides that the County Assessor shall accept an electronically generated letter of service-connected disability, in lieu of an original letter of service-connected disability, at the discretion of the claimant, for purposes of verifying eligibility for an exemption.

**Fiscal Impact Summary:** No impact. The BOE would incur an estimated \$1,051 in costs to inform County Assessors and the public of the new law.

**Existing Law:** R&TC section 205.5 exempts fully or partially from property tax, the principal place of residence of a veteran that is owned by the veteran, the veteran's spouse, or jointly by the veteran and the veteran's spouse if the veteran because of injury or disease incurred in military service, is blind in both eyes, has lost the use of two or more limbs, or is totally disabled. The exemption also applies to property that is owned by, and is the principal place of residence of, the unmarried surviving spouse of a deceased veteran if the deceased veteran qualified for the exemption during the veteran's lifetime or if the veteran died from a disease that was service-connected as determined by the United States Department of Veterans Affairs (USDVA). This exemption is commonly referred to as the "disabled veterans' exemption." R&TC section 277<sup>20</sup> requires that anyone claiming the disabled veterans' exemption must file a claim with the County Assessor. Currently, a disabled veteran must have a disability rating of 100 percent to be eligible for the exemption; no partial exemption is allowed for a rating less than 100 percent.

### Proposed Law:

**Verifying Eligibility for Exemption.** This bill amends R&TC section 205.5 to provide that the County Assessor shall accept an electronically generated letter of service-connected disability, in lieu of an original letter of service-connected disability, at the discretion of the claimant, for purposes of verifying eligibility for a disabled veterans' exemption. "Letter of service-connected disability" means a letter from the USDVA that provides a benefit summary of the claimant's service-connected disability for purposes of claiming the disabled veterans' exemption.

**In General.** California law provides a qualified disabled veteran or their unmarried surviving spouse with a property tax exemption that applies to their principal residence's assessed value. Exemption eligibility provisions require that the claimant obtain a USDVA disability rating that either (1) rates the veteran's disability at 100 percent, or (2) rates the veteran's disability compensation at 100 percent because the veteran is unable to secure and maintain gainful employment.

<sup>20</sup> R&TC section 277.

The law also allows unmarried surviving spouses to receive the exemption if the spouse's death was service-connected. In the case of a service-connected death, to be eligible for the exemption, surviving spouses must receive a USDVA determination that the spouse's death was service-connected. A USDVA determination is necessary for (1) active-duty personnel deaths (for example, the service person was not a "veteran"), and (2) veterans without a 100 percent rating when alive but whose cause of death is deemed service-connected. Surviving spouses of veterans continue to receive the exemption after the veteran's death, so long as they do not remarry.

The law provides two levels of exemption, depending upon the claimant's income. For the 2023-24 fiscal year, the basic exemption adjusted for inflation will be \$161,083. However, if the claimant's income is less than \$72,335, the exemption amount will be \$241,627. For the 2022-23 assessment year, 68,114 disabled veterans or their unmarried surviving spouses were granted the disabled veterans' exemption.

**Commentary:**

12. **Download Eligibility Letter.** The USDVA provides easy access on their website for veterans to download benefit-related letters. The download is free, and the latest version of Adobe Acrobat Reader is required. Letters can also be downloaded on mobile devices.
13. **Related Legislation.** [AB 1361](#) (Hoover) proposes a procedure for filing a preliminary application for either the veterans' or disabled veterans' exemption. For a 10-year period, [SB 726](#) (Archuleta) proposes to add another disabled veterans' exemption in lieu of the existing exemption.

**Costs.** In relation to the writing of a Letter to Assessors and the posting of the letter to the website, the BOE would incur costs of approximately \$1,051.

**Revenue Impact:** No direct impact.



## Senate Bill 388 (Archuleta) – Chapter 214

# Alcoholic Beverage Tax: Beer Manufacturer Returns and Schedules

Effective January 1, 2024

### Adds Revenue and Taxation Code section 32457.2

**Summary:** Requires the BOE to release confidential taxpayer information upon request contained in the beer returns filed by Alcoholic Beverage Tax (ABT) program taxpayers on or after January 1, 2024, including the names and addresses of all taxpayers filing a return except if that taxpayer is a natural person or opts out of disclosing any information. The bill would additionally require the BOE to amend the beer manufacturer return to include a designated line or checkbox where the taxpayer may elect to prohibit disclosure and a brief description of how the beer industry has historically used information contained in beer manufacturer returns.

**Fiscal Impact Summary:** Indeterminable.

**Existing Law:** R&TC section 32251 requires a taxpayer to file a tax return on or before the 15<sup>th</sup> day of each month for the preceding calendar month, in the form as prescribed by the BOE, which may include the amount of beer or wine or distilled spirits sold in the state, the amount of tax for the period covered in the return, or any other information the BOE deems necessary.<sup>21</sup> Beer manufacturers may be assigned a monthly, quarterly, or annual reporting basis. All tax returns are required to be filed electronically.

R&TC section 32455 protects the confidentiality of any report regarding the names of the purchasers and the amounts of individual sales. Government Code (GC) section 15619 also provides, in pertinent part, that the BOE and its employees may not divulge any information, other than the assessment and the amount of taxes levied, obtained by the Board in accordance with law, from any company other than one concerning which such information is required by law to be made public.

R&TC section 32457 states all information contained in the Vendor's Report of Beer Shipments into California may be made public. In 2022, the legislature added R&TC section 32457.1, which states that any information contained in the returns and accompanying schedules of a winegrower filed on or after January 1, 2023, shall be made public upon request, including the names and addresses of all taxpayers filing a winegrower return. The exception being the names and addresses of any taxpayer that is a natural person. Further, a taxpayer may elect to prohibit the disclosure of any information contained in that taxpayer's winegrower return and accompanying schedules.

<sup>21</sup> The current *Beer Manufacturer Tax Return* form is CDTFA-501-BM.

**Proposed Law:** SB 388 adds R&TC section 32457.2, which mirrors R&TC 32457.1, and requires any information contained in a beer manufacturer return and schedules filed on or after January 1, 2024, to be made public upon request, including the names and addresses of beer manufacturers filing a return, as specified, unless prohibited. The bill prohibits the disclosure of the name and address of any taxpayer that is a natural person and any taxpayer information when the taxpayer has elected to prohibit such disclosure. The BOE is required to amend the beer manufacturer return to include a designated line or checkbox to allow a taxpayer to elect to prohibit disclosure of taxpayer information contained in the beer manufacturer return and schedules.

Further, it requires the BOE to conspicuously display information within the return describing how the beer industry has historically used beer manufacturer return information for market analysis and the taxpayer's right to opt-out of public disclosure.

**In General:** Article XX, section 22 of the California Constitution charges the BOE to administer the ABT and is constitutionally responsible for the program.

Through an Interagency Agreement (IAA), the California Department of Tax and Fee Administration (CDTFA) collects the ABT and administers the program in cooperation with the BOE. In accordance with the IAA, CDTFA administers the day-to-day operations of the ABT, including collecting revenues, processing reports and returns, issuing determinations, and providing taxpayer technical assistance while the Board handles any legal functions (including Public Records Act (PRA) requests), petitions for redeterminations, and taxpayer appeals.

**Background:** Beer manufacturers are required to file returns under R&TC section 32251 showing the amount of beer sold in the state, the amount of tax for the period covered in the return, and any other information the BOE deems necessary.

The BOE has one primary confidential statute in GC section 15619, subdivision (b), which provides that the "Board is prohibited from disclosing any information other than the assessment and amount of taxes levied obtained by the Board in accordance with the law from any company other than the one concerning which that information is required by law to be made public."

Historically, the BOE provided monthly Alcohol Returns Reports (Alcohol Reports) to a small email group. The Alcohol Reports contained verified information provided by taxpayers in their tax returns. In 2019, the BOE's Disclosure Office reevaluated its policies and sought guidance from the Attorney General (AG) to determine what information could be made public. The AG advised that the information contained in the Alcohol Returns was not exempt from disclosure under the PRA based on a statutory prohibition in GC section 15619 subdivision (b). Additionally, upon review of prior practices and in light of the advice received from the AG, it was determined that it was not legally appropriate to release some of the information that had previously been released to the public. The BOE then released information contained in the Alcohol Reports but removed all the identifying taxpayer information as advised by the AG.

In general, if an agency discloses a public record that is exempt from the PRA to a member of the public, “this disclosure shall constitute a waiver of” the PRA exemptions.<sup>22</sup> This exemption was evidenced in *Black Panther Party v. Kehoe*,<sup>23</sup> where the Court found that information that was previously disclosed had to continue to be disclosed, consistent with longstanding practice. However, *Black Panther Party* is inapposite to the disclosure of information in the ABT Returns. In *Black Panther Party*, no statutory disclosure prohibition was asserted as the basis for a disclosure exemption. Whereas the BOE is asserting a statutory disclosure prohibition under GC section 15619.

Currently, the BOE releases aggregate ABT information on the BOE’s [Open Data Portal](#) (ODP) including alcohol consumption per capita, consumption per fiscal year, and the alcohol tax collected. The following aggregate tax return data is also provided: beer and wine importer tax return, beer manufacturer tax return, distilled spirits tax return, and winegrower tax return.

**Commentary:**

1. **“Opt-In” Rather than “Opt-Out.”** SB 388 provides taxpayers an option to “opt-out,” which would allow taxpayers to prohibit their return, or any information contained therein, from being made public. While an “opt-out” provides taxpayers an avenue to ensure their confidential information isn’t made public, taxpayers must still take an extra step to protect their data that is already statutorily protected.

Under current statutory law and the informal advice provided by the AG, confidential taxpayer information shall remain confidential and not be improperly released. An “opt-in” stays in accordance with statutory law as taxpayers would, by default, have their information protected. Taxpayers who wish to have their information public would then “opt-in” to the program. Taxpayers should not have to take an extra step to protect their confidential information when it is already statutorily protected. This would inconvenience compliant taxpayers and possibly result in those taxpayers not realizing they need to “opt-out” in order to protect their data. Additionally, if a taxpayer has a third-party file their returns, like an attorney or certified public accountant, can those individuals opt-out on behalf of their client? How can the BOE ensure taxpayers themselves opted out?

2. **Taxpayer Information.** An integral part of California’s taxation system is the protection of personal identifiable information from being improperly released or exposed. Taxpayers trust that governmental agencies who receive their taxpayer information handle it properly and prevent their confidential information from being improperly shared. Should confidential taxpayer information be shared publicly, would this cause taxpayers to falsely report information if they are concerned with their information being made public?
3. **Beer Shipper Vendor Reports.** Businesses that import beer into California must fill out a CDTFA-1056 by the 10<sup>th</sup> of each month and must disclose all shipments of beer made into California for the preceding month. The form lists the name of the licensed importer, importer’s CDTFA account number, the destination city, transportation method, the waybill, bill of lading, or freight number and date, the invoice number of the shipment, and the total gallons shipped. Additionally, the form contains the shipper’s account number, business name, and mailing address. In contrast to the winegrower tax return, it does not contain currently confidential tax information like penalty, interest, or total amount due and payable. It does not include any calculation of tax.

<sup>22</sup> GC section 6254.5.

<sup>23</sup> *Black Panther Party v. Kehoe*, (1974) 42 Cal.App.3d 645, 656.

4. **Processing.** Processing returns and verifying they are free of calculation errors can be time consuming, sometimes requiring contacting the taxpayer. Would this bill require any return to be released even if it has not been verified error free? Additionally, is there a specific time frame for when the information must be released, or is it a case-by-case basis to allow for the verification of data?
5. **Prior Legislation.** SB 518 (Laird) was approved by the Governor and chaptered on September 28, 2022, to make public upon request any information contained in a winegrower's alcoholic beverage tax return and accompanying schedule.
6. **SB 518 Winegrower Impact.** Preliminary monthly winegrower returns filed in January 2023 and February 2023 indicates that an estimated sixty-three percent of winegrowers elected or opted to prohibit disclosure of any return or accompanying schedule information. BOE staff assume that beer manufacturers may also exhibit similar taxpayer behavior in relation to information disclosure.
7. **Other Program Tax Returns.** Other ABT program returns would remain confidential as they are not addressed in this bill.
8. **Historical Use of Data.** The industry has yet to contact the BOE to describe how they have historically used the data; to date, the BOE is unaware if the industry uses the tax data for any market analysis.

**Costs:** The BOE would incur costs of approximately \$58,000 for fiscal year (FY) 2023-24, \$55,000 for FY 2024-25, and \$22,000 for FY 2025-26, and ongoing.

**Revenue Impact:** Indeterminable since it is unknown on how taxpayer compliance behavior may change due to their confidential information becoming public.





# Senate Bill 419 (Roth)—Chapter 713

## Property Tax: Space Flight

Effective October 10, 2023

### Amends Revenue and Taxation Code section 242

**Summary:** Extends the property tax exemption for personal property used in space flight for an additional five years.

Adds specific goals, objectives, and performance indicators to subdivision (g) of R&TC section 242.

Requires the Legislative Analyst's Office (LAO) to provide a report to the Assembly Committee on Revenue and Taxation, the Senate Committee on Governance and Finance, and the public that summarizes its findings relating to the performance indicators; authorizes, in researching the report, the LAO to request and receive information from county assessors, the BOE, the Employment Development Department, taxpayers benefitting from the exemption, trade associations, and other individuals or entities.

Provides that the information received by the LAO to produce this report shall be deemed confidential and exempt from the Legislative Open Records Act (LORA).

**Fiscal Impact Summary:** Indeterminable revenue loss.

**Existing Law:** Current law exempts from property tax qualified property for use in space flight for lien dates 2014 to 2024, inclusive. "Space flight" means any flight designed for suborbital, orbital, or interplanetary travel by a space vehicle, satellite, space facility, or space station of any kind. The exemption is limited to taxpayers that have a primary business purpose in space flight activities. The exemption does not apply to any material that is not intended to be launched into space but does apply regardless of whether the property will ultimately be returned to California.

"Qualified property" includes:

- Tangible personal property that has space flight capacity. This includes, but is not limited to, an orbital space facility, space propulsion system, space vehicle, launch vehicle, satellite, or space station of any kind, and any component thereof.
- Tangible personal property, including raw materials, work in process, or finished goods, that has, or upon manufacture, assembly, or installation, has space flight capacity.
- Fuel produced, sold, and exclusively used for space flight and not adaptable for use in ordinary motor vehicles.

The Assessor cannot deny the exemption for either of the following reasons:

- The space flight launch fails, is postponed, or is canceled.
- A launch vehicle, or any component thereof, is destroyed.

**Proposed Law:** This bill extends the exemption for property used in space flight from a lien date of January 1, 2024, to a lien date of January 1, 2029. In addition, the repeal date of this section is extended from July 1, 2025, to July 1, 2030. This bill also adds language to comply with R&TC section 41, which requires the LAO to report detailed performance indicators to the Legislature by January 1, 2028. These provisions allow the LAO to request and receive information from County Assessors, the BOE, and others, and provides that the information received by the LAO to produce this report shall be deemed confidential and exempt from the LORA.

**In General: Business Personal Property.** Personal property used in a trade or business is generally taxable, unless specifically exempt. Annually, the law requires property owners to report their business personal property to the County Assessor on a business property statement, which is subject to audit. The value limitations for real property under Proposition 13 do not apply to personal property, which is valued each lien date at the current fair market value.

A business property statement includes information regarding supplies, business equipment, and leasehold improvements for each business location in the state. The owner reports the acquisition costs of supplies, business equipment, and leasehold improvements that were owned on the lien date at the business location. The owner-provided information is then used to assess and tax property in accordance with the law. With certain exceptions, business inventory and licensed vehicles are not taxable personal property and are not reported on the statement.

**Business Inventory.** Business inventory includes all personal property that becomes part of, or are themselves, a product that is held for sale or lease in the ordinary course of business on the lien date (January 1). For an item of personal property to qualify for the business inventory exemption, the key phrases “*ordinary course of business*” and “*goods intended for sale or lease*” must apply.

**Commentary:**

- 1. The Legislature May Tax or Exempt Personal Property at its Discretion.** Because space flight property is classified as personal property, the Legislature may legally exempt it, provided they do so by a two-thirds vote of both houses. Section 2 of Article XIII of the California Constitution provides that the Legislature, two-thirds of the membership of each house concurring, may classify personal property for differential taxation or for exemption.
- 2. Related Property Tax Rule 133 and California State Board of Equalization (BOE) Legal Opinions.** [Property Tax Rule 133](#), Business Inventory Exemption, was amended effective October 1, 2014, and provides that exempt business inventories include space flight property that is not operationally reusable. On December 24, 2013, the BOE's Legal Department issued an advisory, non-binding legal opinion ([Property Tax Annotation 205.0280](#)) stating that the business inventory exemption applies to space flight property fabricated and used to transport satellites and cargo to locations in outer space if the owner relinquishes ultimate control at launch to a federal launch safety authority for space flight termination purposes.

3. **Data Collection.** This bill requires the Legislative Analyst to issue a report on the effectiveness of this exemption and may request data from the BOE and County Assessors, if necessary, to comply with the provisions of R&TC section 41. However, we note that R&TC section 41 applies to tax exemptions imposed by R&TC Part 1 (commencing with R&TC section 6001) of Division 2, which is the sales and use tax law and does not have applicability to property tax exemptions.
4. **Prior Legislation.** SB 862 (Umberg) in 2022 proposed to expand the space flight property tax exemption to include qualified property used for space flight activities commencing with the January 1, 2022, lien date and extend the property tax exemption to, and including, the January 1, 2032, lien date and repeal the section on July 1, 2033. The bill was held in committee without further action.

**Costs:** The BOE will have to issue a Letter to Assessors (LTA) announcing the sunset date extension. The cost to notify County Assessors of the extension is approximately \$1,051. However, there will be additional unabsorbable costs if the LAO asks the BOE to collect and report data from County Assessors.

**Revenue Impact:** County Assessors have indicated that taxpayers are not required to report or identify assets exempted by law as they are only required to provide the County Assessor with this information upon request. A request for information on exempt assets would be done through an audit process performed by the County Assessor. This explanation by the County Assessors highlights the difficulty in estimating the current exemption impact on local property tax revenues. Therefore, at this time, the revenue loss is indeterminable.



# Senate Bill 520 (Seyarto) – Chapter 781

## Program: Property Tax: Homeowners' Exemption

Effective October 11, 2023

### Amends Revenue and Taxation Code section 218

**Summary:** SB 520 clarifies that individuals who are confined to a hospital or a live-in care facility are still “occupying their principal residence” for the purpose of qualifying for their homeowners’ property tax exemption. Clarifies that for a residence to continue to qualify for the homeowners’ exemption when the homeowner is confined to a hospital or care facility that the dwelling is not rented or leased to a person not described in Section 267 (c)(4) of Title 26 of the Internal Revenue Code.

**Fiscal Impact Summary:** Indeterminable.

**Existing Law:** The California Constitution<sup>24</sup> exempts from property tax the first \$7,000 of assessed value for owner-occupied principal places of residence, commonly known as the “homeowners’ exemption.” The Constitution<sup>25</sup> also requires the state to reimburse local agencies annually for certain property tax revenues lost as a result of any exemption or classification of property for purposes of ad valorem property taxation.

The implementing statute<sup>26</sup> specifies exemption amounts, eligibility requirements, and filing requirements. The exemption does not extend to property that is rented, vacant, under construction on the lien date, or that is a vacation or secondary home of the owner or owners, nor does it apply to property on which an owner receives the veteran’s exemption.

**Proposed Law: Homeowners’ Exemption.** This bill would provide that if a person receiving the exemption is not occupying the dwelling because they are confined to a hospital or other care facility, the person shall be deemed to occupy that dwelling as their principal place of residence, provided that the person would occupy the dwelling if they were not confined to the hospital or other care facility, the person intends to return to the dwelling when possible to do so, and the dwelling is not rented or leased to a person that is not described in Section 267 (c)(4) of Title 26 of the United States Code.

**In General: Creation of Homeowners’ Exemption.** Prior to the enactment of Proposition 13<sup>27</sup> in 1978, property tax reform advocates in the 1960s and 1970s put forth various reform proposals that departed from a market value-based property tax system. At that time, the law required the County Assessor to reassess property to its current market value cyclically. These periodic reassessments resulted in substantial property tax increases due to escalating real estate values during that time period.

<sup>24</sup> Article XIII, section 3(k).

<sup>25</sup> Article XIII, section 25.

<sup>26</sup> Revenue and Taxation Code (R&TC) section 218.

<sup>27</sup> Article XIII A of the California Constitution.

In 1968, voters enacted the homeowners' exemption to provide some property tax relief.<sup>28</sup> Initially, the exemption amount was \$3,000<sup>29</sup> of assessed value. In 1972, legislation increased the exemption amount to its current level of \$7,000, effective in 1974.<sup>30</sup>

Between 1972 and 1978, the Legislature introduced numerous bills to increase the exemption amount. All were rejected. The prevailing view was that continuous increases in the homeowners' exemption would, at best, only provide temporary property tax relief in inflationary times. Thus, those holding this view argued that fundamentally changing the property tax system to contain rapidly increasing property taxes was the better approach. Ultimately, voters adopted Proposition 13.

**Property Tax System Reform.** Voters changed California's property tax system through Proposition 13 (1978), replacing a current market value-based system with an acquisition value-based system. Under this new law, real property assessed values were rolled back to 1975 market value levels, and future assessed value increases were limited to the inflation rate, not to exceed one percent, for as long as the property's ownership remained unchanged and the property was not substantially improved (for example, new construction). Proposition 13 also limited the basic property tax rate to 1 percent, plus voter-approved bonded indebtedness. Previously, the statewide average tax rate was 2.67 percent, as each taxing agency could set and levy its own rate to meet its budgetary needs.

The current system provides certainty to property owners regarding future property tax liability. The 2 percent maximum inflation adjustment ensures only modest assessed value increases, assuming no ownership changes or substantial property improvements.

**Commentary:**

1. **Temporary Absence.** The BOE opined in Letter to Assessors (LTA) No. 82/50 on the subject of being 'temporarily away' for purposes of the homeowners' exemption, and the following are questions that the LTA No. 82/50 addressed:

**Question:** *May a person who is temporarily away from his residence, and the residence was not leased or rented to others on the lien date, qualify for the homeowners' exemption?*

**Answer:** *Yes. An absence for more than one year would raise considerable doubt that this is the principal residence.*

**Question:** *Does the dwelling occupied by the family of a son and owned by a parent who is confined to a convalescent home or hospital qualify for the homeowners' exemption?*

**Answer:** *Yes. The dwelling may be exempt if the claimant is expected to return to the dwelling and if he does not receive rent from any persons occupying the premises. An absence for more than one year would raise considerable doubt that the owner is expected to return.*

<sup>28</sup> Proposition 1-A, SCA 1 and SB 8, Statutes of 1968.

<sup>29</sup> The actual exemption amount was \$750 of assessed value; however, at that time, property was assessed at 25 percent, rather than 100 percent, of market value. To compare the exemption amounts on the same mathematical basis, the "equivalent" amount of \$3,000 is referenced ( $\$750 \times 4 = \$3,000$ ).

<sup>30</sup> SB 90, Statutes of 1972, provided for a \$1,750 exemption amount. But assessments were set at 25 percent of market value. To compare the exemption amounts on the same mathematical basis, the equivalent amount of \$7,000 is referenced ( $\$1,750 \times 4 = \$7,000$ ).

A summary of BOE's LTA No. 82/50 on the subject of temporary absence is as follows:

- i. A temporary absence from one's principal residence does not disqualify one for the exemption so long as the property is not leased or rented on the lien date. An absence of more than one year would raise considerable doubt that a residence is a principal residence.*
  - ii. Hospitalization in a convalescent home does not disqualify one for the exemption if the claimant expects to return to the dwelling and the property is not leased or rented.*
  - iii. An absence for training or employment or a temporary exchange of dwellings with no rentals paid does not disqualify one for the exemption. LTA No. 82/50 (3/23/1982).*
- 2. The State Subvenes Homeowners' Exemption Property Tax Revenue Loss.** The homeowners' exemption is the only property tax exemption for which the state fully reimburses local governments. This bill would provide that, notwithstanding those provisions, no appropriation is made, and the state shall not reimburse local agencies for property tax revenues lost by them pursuant to the bill.
- 3. Intergenerational Transfers.** Regarding the Proposition 19 (2020) intergenerational transfer change in ownership exclusion, for an eligible transferor, the family home must be eligible for the homeowners' or disabled veterans' exemption as a result of the transferor's ownership and occupation of the property as a principal residence. Section 2.1(c) of Article XIII A requires a transferee to file for the homeowners' or disabled veterans' exemption within one year of the date of transfer or change in ownership in order to be eligible for the intergenerational transfer exclusion. Once the exclusion is granted to an eligible transferee, the family home must remain eligible for the exemption in order to retain the change in ownership exclusion. If the personal residence of a person confined to a hospital or other care facility is no longer eligible for the homeowners' exemption, then the property would no longer be eligible for intergenerational transfer to an eligible transferee.

**Costs:** Counties administer the homeowners' exemption and may incur costs to modify their systems to reflect any law changes. The BOE monitors duplicate claims granted under the homeowners' and disabled veterans' exemptions and would also incur an estimated \$1,051 in costs to inform and advise County Assessors, the public, and staff of the law changes.

**Revenue Impact:** Staff views SB 520 as a clarification proposal in relation to the homeowners' exemption and temporary absence. Staff does not have any specific county data on the number of absence cases tied to homeowners in a hospital or other care facility and where counties may have denied exemptions. In general, research does indicate that most people leave healthcare facilities within one year. For example, a 2020 study concluded that eighty-eight percent of nursing home residents were discharged after a stay of 3 months or less and that only six percent of residents stayed for one year or more. Based on the 1982 BOE LTA discussed above, which includes the nursing home example, a minimal number of homeowners may have doubts raised about their residency and their qualification for the exemption.

At this time, based on unknown factors or specific data, the revenue loss is difficult to compute and indeterminable.

# Senate Bill 734 (Rubio)—Chapter 785

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## Property Tax: Possessory Interest

Effective October 11, 2023

### Adds Revenue and Taxation Code Section 107.10

**Summary:** This bill would add section 107.10 to the R&TC. 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. R&TC 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, R&TC 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."<sup>31</sup>

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."

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<sup>31</sup> California Code of Regulations, Title 18, section 20. Property Tax Rule 20 specifies that "to 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.

R&TC 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 R&TC. 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 military housing pursuant to R&TC 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 for the first year and ongoing 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 ( $\$40,000 \times 7,700$  units). At the one percent property tax rate, annual property tax revenue loss is estimated at \$3.1 million ( $\$308$  million  $\times 1\%$ ).

**Qualifying Remarks.**

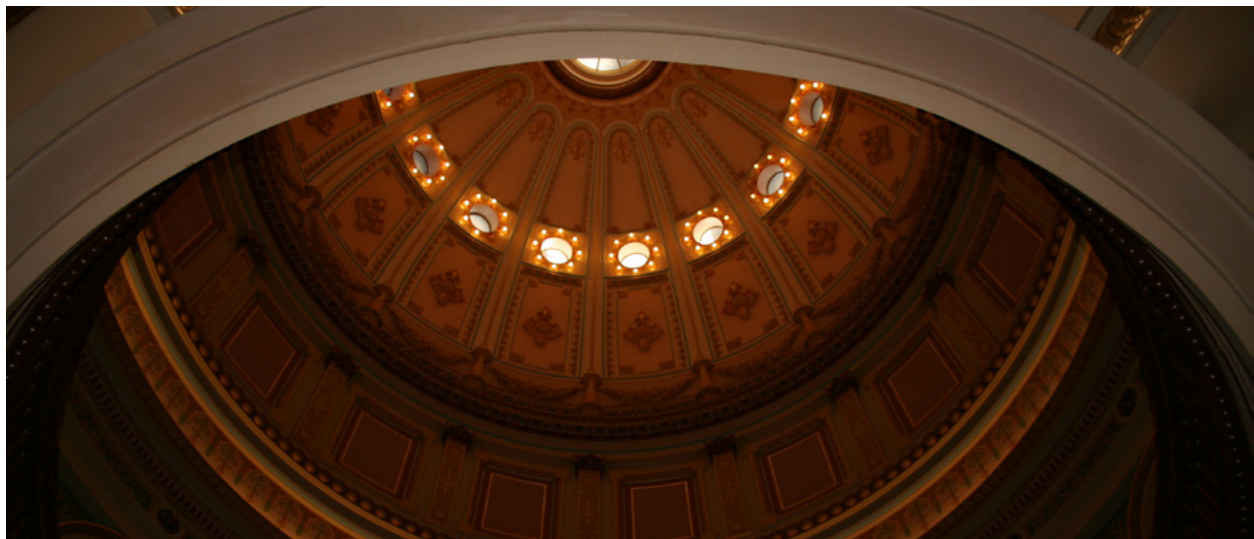
It should be noted that the above revenue analysis does not include future developments; hence, this revenue impact may be understated.

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.



**Table of Sections Affected**

SECTIONS	ACTION	BILL NUMBER	CHAPTER NUMBER	SUBJECT
<b>Revenue and Taxation Code</b>				
§69	Amend	AB 556	443	Property Tax: Base Year Value Transfer—Disaster Relief
§70.5	Amend	AB 1500	583	Property Tax: Disaster Relief
§107.10	Add	SB 734	785	Property Tax: Possessory Interest
§205.5	Amend	SB 82	773	Property Tax: Service-Connected Disability
§214	Amend	AB 84	734	Property Tax Welfare Exemption
§242	Amend	SB 419	713	Property Tax: Space Flight Exemption
§205.5	Amend	AB 1361	473	Property Tax: Disabled Veterans' Exemption: Preliminary Application
§259.15	Amend	AB 84	734	Property Tax Welfare Exemption
§32457.2	Add	SB 388	214	Alcoholic Beverage Tax: Beer Manufacturer Returns and Schedules
§34400	Amend	AB 1528	766	Property Tax: Housing Authorities—Nonprofit Public Benefit Corporations







# LEGISLATIVE BULLETIN

## PROPERTY TAX LEGISLATION 2023