

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 793

Introduced by Assembly Member Strickland

February 22, 2007

An act to amend Sections 110 and 402.1 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 793, as amended, Strickland. Property taxation: affordable housing assessments.

The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, existing property tax law defines "full cash value" as the assessor's fair market value valuation of real property as shown on the 1975–76 tax bill under "full cash value" or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. *Existing property tax law generally defines this "full cash value" of property as the property's fair market value. Existing law rebuttably presumes that the fair market value of real property, other than possessory interests, is the purchase price paid in the transaction for the property. For purposes of this presumption, existing law defines "purchase price" as the total consideration provided by the purchaser or on the purchasers behalf, valued in money, whether paid in money or otherwise. Existing law requires the county assessor to consider, when valuing real property for property taxation purposes, the effect of any enforceable restrictions to which the use of the land may be subjected. Under existing law these restrictions include, but are not limited to, zoning, recorded contracts*

with governmental agencies, and various other restrictions imposed by governments.

~~This bill would state the intent of the Legislature to enact the necessary statutory changes to provide that if a homeowner is participating in an affordable housing program, that homeowner's dwelling will be taxed under the ad valorem property tax at the value the homeowner paid for the dwelling rather than the fair market value of the dwelling.~~

This bill would exclude from the meaning of purchase price, for purposes of the rebuttable presumption that the purchase price of real property is the fair market value of the property, the amount stated in a trust deed, recorded in conjunction with an affordable housing unit purchased by its occupant, for which that occupant is the trustor and a nonprofit or governmental agency selling authority is the beneficiary, and both have contracted that a periodic payment of principal and interest will not be required for at least 20 years. This bill would also require the county assessor to consider, when valuing real property for property taxation purposes, restrictions on the resale price of real property in a recorded real property deed or other recorded real property transfer document for real property that was purchased by its occupant through an affordable housing program operated by a city, a county, the state, or a nonprofit organization. By changing the manner in which county assessors assess property for property taxation purposes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Section 2229 of the Revenue and Taxation Code requires the Legislature 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.

This bill would provide that, notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for property tax revenues lost by them to the bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) Affordable housing programs provide families with an*
4 *opportunity to better their lives and the lives of their children by*
5 *making available the American dream of home ownership.*

6 *(b) Section 402.1 of the Revenue and Taxation Code already*
7 *requires county assessors to consider the effect of enforceable*
8 *restrictions on land when assessors value that land for property*
9 *taxation purposes.*

10 *(c) This act would extend this existing practice to considering*
11 *the effect of enforceable restrictions, put on land pursuant to an*
12 *affordable housing program that assists families in purchasing*
13 *their own homes, and silent second mortgages that may affect the*
14 *fair market value of that property.*

15 *(d) Therefore, it is the intent of the Legislature in enacting this*
16 *act to further a state public policy of encouraging and maintaining*
17 *effective land use planning by ensuring that homes purchased*
18 *under an affordable housing program are valued for property*
19 *taxation purposes in a manner that reflects the restrictions on the*
20 *homes.*

21 *SEC. 2. Section 110 of the Revenue and Taxation Code is*
22 *amended to read:*

23 110. (a) Except as is otherwise provided in Section 110.1, “full
24 cash value” or “fair market value” means the amount of cash or
25 its equivalent that property would bring if exposed for sale in the
26 open market under conditions in which neither buyer nor seller
27 could take advantage of the exigencies of the other, and both the
28 buyer and the seller have knowledge of all of the uses and purposes
29 to which the property is adapted and for which it is capable of
30 being used, and of the enforceable restrictions upon those uses and
31 purposes.

32 (b) For purposes of determining the “full cash value” or “fair
33 market value” of real property, other than possessory interests,
34 being appraised upon a purchase, “full cash value” or “fair market
35 value” is the purchase price paid in the transaction unless it is

1 established by a preponderance of the evidence that the real
2 property would not have transferred for that purchase price in an
3 open market transaction. The purchase price shall, however, be
4 rebuttably presumed to be the “full cash value” or “fair market
5 value” if the terms of the transaction were negotiated at arms length
6 between a knowledgeable transferor and transferee neither of which
7 could take advantage of the exigencies of the other. “Purchase
8 price,” as used in this section, means the total consideration
9 provided by the purchaser or on the purchaser’s behalf, valued in
10 money, whether paid in money or otherwise, *but, beginning with*
11 *the lien date for the 2008–09 fiscal year and for each fiscal year*
12 *thereafter, does not include the amount stated in a trust deed,*
13 *recorded in conjunction with an affordable housing unit purchased*
14 *by its occupant, for which that occupant is the trustor and a*
15 *nonprofit or governmental agency selling authority is the*
16 *beneficiary, and both have contracted that a periodic payment of*
17 *principal and interest will not be required for at least 20 years.*
18 There is a rebuttable presumption that the value of improvements
19 financed by the proceeds of an assessment resulting in a lien
20 imposed on the property by a public entity is reflected in the total
21 consideration, exclusive of that lien amount, involved in the
22 transaction. This presumption may be overcome if the assessor
23 establishes by a preponderance of the evidence that all or a portion
24 of the value of those improvements is not reflected in that
25 consideration. If a single transaction results in a change in
26 ownership of more than one parcel of real property, the purchase
27 price shall be allocated among those parcels and other assets, if
28 any, transferred based on the relative fair market value of each.

29 (c) For real property, other than possessory interests, the change
30 of ownership statement required pursuant to Section 480, 480.1,
31 or 480.2, or the preliminary change of ownership statement
32 required pursuant to Section 480.4, shall give any information as
33 the board shall prescribe relative to whether the terms of the
34 transaction were negotiated at “arms length.” In the event that the
35 transaction includes property other than real property, the change
36 in ownership statement shall give information as the board shall
37 prescribe disclosing the portion of the purchase price that is
38 allocable to all elements of the transaction. If the taxpayer fails to
39 provide the prescribed information, the rebuttable presumption
40 provided by subdivision (b) shall not apply.

1 (d) Except as provided in subdivision (e), for purposes of
2 determining the “full cash value” or “fair market value” of any
3 taxable property, all of the following shall apply:

4 (1) The value of intangible assets and rights relating to the going
5 concern value of a business using taxable property shall not
6 enhance or be reflected in the value of the taxable property.

7 (2) If the principle of unit valuation is used to value properties
8 that are operated as a unit and the unit includes intangible assets
9 and rights, then the fair market value of the taxable property
10 contained within the unit shall be determined by removing from
11 the value of the unit the fair market value of the intangible assets
12 and rights contained within the unit.

13 (3) The exclusive nature of a concession, franchise, or similar
14 agreement, whether de jure or de facto, is an intangible asset that
15 shall not enhance the value of taxable property, including real
16 property.

17 (e) Taxable property may be assessed and valued by assuming
18 the presence of intangible assets or rights necessary to put the
19 taxable property to beneficial or productive use.

20 (f) For purposes of determining the “full cash value” or “fair
21 market value” of real property, intangible attributes of real property
22 shall be reflected in the value of the real property. These intangible
23 attributes of real property include zoning, location, and other
24 attributes that relate directly to the real property involved.

25 *SEC. 3. Section 402.1 of the Revenue and Taxation Code is*
26 *amended to read:*

27 402.1. (a) In the assessment of land, the assessor shall consider
28 the effect upon value of any enforceable restrictions to which the
29 use of the land may be subjected. These restrictions shall include,
30 but are not limited to, all of the following:

31 (1) Zoning.

32 (2) Recorded contracts with governmental agencies other than
33 those provided in Sections 422 and 422.5.

34 (3) Permit authority of, and permits issued by, governmental
35 agencies exercising land use powers concurrently with local
36 governments, including the California Coastal Commission and
37 regional coastal commissions, the San Francisco Bay Conservation
38 and Development Commission, and the Tahoe Regional Planning
39 Agency.

- 1 (4) Development controls of a local government in accordance
 2 with any local coastal program certified pursuant to Division 20
 3 (commencing with Section 30000) of the Public Resources Code.
- 4 (5) Development controls of a local government in accordance
 5 with a local protection program, or any component thereof, certified
 6 pursuant to Division 19 (commencing with Section 29000) of the
 7 Public Resources Code.
- 8 (6) Environmental constraints applied to the use of land pursuant
 9 to provisions of statutes.
- 10 (7) Hazardous waste land use restriction pursuant to Section
 11 25240 of the Health and Safety Code.
- 12 (8) A recorded conservation, trail, or scenic easement, as
 13 described in Section 815.1 of the Civil Code, that is granted in
 14 favor of a public agency, or in favor of a nonprofit corporation
 15 organized pursuant to Section 501(c)(3) of the Internal Revenue
 16 Code that has as its primary purpose the preservation, protection,
 17 or enhancement of land in its natural, scenic, historical, agricultural,
 18 forested, or open-space condition or use.
- 19 (9) *Beginning with the lien date for the 2008–09 fiscal year and*
 20 *for each fiscal year thereafter, restrictions on the resale price of*
 21 *real property in a recorded real property deed or other recorded*
 22 *real property transfer document for real property that was*
 23 *purchased by its occupant through an affordable housing program*
 24 *operated by a city, a county, the state, or a nonprofit organization.*
- 25 (b) There is a rebuttable presumption that restrictions will not
 26 be removed or substantially modified in the predictable future and
 27 that they will substantially equate the value of the land to the value
 28 attributable to the legally permissible use or uses.
- 29 (c) Grounds for rebutting the presumption may include, but are
 30 not necessarily limited to, the past history of like use restrictions
 31 in the jurisdiction in question and the similarity of sales prices for
 32 restricted and unrestricted land. The possible expiration of a
 33 restriction at a time certain shall not be conclusive evidence of the
 34 future removal or modification of the restriction unless there is no
 35 opportunity or likelihood of the continuation or renewal of the
 36 restriction, or unless a necessary party to the restriction has
 37 indicated an intent to permit its expiration at that time.
- 38 (d) In assessing land with respect to which the presumption is
 39 un rebutted, the assessor shall not consider sales of otherwise
 40 comparable land not similarly restricted as to use as indicative of

1 value of land under restriction, unless the restrictions have a
2 demonstrably minimal effect upon value.

3 (e) In assessing land under an enforceable use restriction wherein
4 the presumption of no predictable removal or substantial
5 modification of the restriction has been rebutted, but where the
6 restriction nevertheless retains some future life and has some effect
7 on present value, the assessor may consider, in addition to all other
8 legally permissible information, representative sales of comparable
9 lands that are not under restriction but upon which natural
10 limitations have substantially the same effect as restrictions.

11 (f) For the purposes of this section the following definitions
12 apply:

13 (1) “Comparable lands” are lands that are similar to the land
14 being valued in respect to legally permissible uses and physical
15 attributes.

16 (2) “Representative sales information” is information from sales
17 of a sufficient number of comparable lands to give an accurate
18 indication of the full cash value of the land being valued.

19 (g) It is hereby declared that the purpose and intent of the
20 Legislature in enacting this section is to provide for a method of
21 determining whether a sufficient amount of representative sales
22 information is available for land under use restriction in order to
23 ensure the accurate assessment of that land. It is also hereby
24 declared that the further purpose and intent of the Legislature in
25 enacting this section and Section 1630 is to avoid an assessment
26 policy which, in the absence of special circumstances, considers
27 uses for land that legally are not available to the owner and not
28 contemplated by government, and that these sections are necessary
29 to implement the public policy of encouraging and maintaining
30 effective land use planning. Nothing in this statute shall be
31 construed as requiring the assessment of any land at a value less
32 than as required by Section 401 or as prohibiting the use of
33 representative comparable sales information on land under similar
34 restrictions when this information is available.

35 *SEC. 4. If the Commission on State Mandates determines that*
36 *this act contains costs mandated by the state, reimbursement to*
37 *local agencies and school districts for those costs shall be made*
38 *pursuant to Part 7 (commencing with Section 17500) of Division*
39 *4 of Title 2 of the Government Code.*

1 *SEC. 5. Notwithstanding Section 2229 of the Revenue and*
2 *Taxation Code, no appropriation is made by this act and the state*
3 *shall not reimburse any local agency for any property tax revenues*
4 *lost by it pursuant to this act.*

5 *SEC. 6. This act provides for a tax levy within the meaning of*
6 *Article IV of the Constitution and shall go into immediate effect.*

7 ~~SECTION 1. It is the intent of the Legislature to enact the~~
8 ~~necessary statutory changes to provide that if a homeowner is~~
9 ~~participating in an affordable housing program, that homeowner's~~
10 ~~dwelling shall be taxed under the ad valorem property tax at the~~
11 ~~value the homeowner paid for the dwelling rather than the actual~~
12 ~~fair market value of the dwelling.~~