

Introduced by Senator KehoeFebruary 22, 2007

An act to amend Sections 62 and 5096 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 559, as introduced, Kehoe. Property taxation: change in ownership: exclusion.

(1) 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, "full cash value" is defined as the assessor's 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. Beginning on January 1, 2006, existing law excludes from the definition of "change in ownership" transfers of real property between registered domestic partners.

This bill would also exclude from the definition of "change in ownership" any transfer of property between registered domestic partners that occurred on or after January 1, 2000, and any transfer between nonregistered domestic partners, as defined, that occurred on or after January 1, 2000, and before January 1, 2007. This bill would require the assessor to reassess property that was transferred between these parties during these time periods as if a change in ownership had not occurred, but only if the transferee submits a request for reassessment on or before June 30, 2009, as specified. Any change in the adjusted base year value of that property would be deemed effective on the first day of the first month following the month in which the request for assessment is submitted. By requiring county assessors to

reassess this property, this bill would impose a state-mandated local program.

(2) Existing law requires property taxes to be refunded if, among other circumstances, the taxes were paid more than once, the taxes were illegally assessed or levied, or paid on an assessment that was in excess of the value of the property, as specified.

This bill would also require a refund of property taxes paid on property that is required to be reassessed under the bill.

(3) 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.

(4) 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 pursuant to the bill.

(5) This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: 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) It is the intent of the Legislature in enacting this act to
- 4 guarantee equality for all Californians, regardless of gender or
- 5 sexual orientation, and to further the state’s interests in protecting
- 6 Californians from the potentially severe economic consequences
- 7 of abandonment, separation, the death of a partner, and other life
- 8 crises.
- 9 (b) To this end, the Legislature has enacted various statutes in
- 10 an attempt to move California closer to fulfilling the promises of

1 inalienable rights, liberty, and equality contained in Sections 1 and
2 7 of Article I of the California Constitution.

3 (c) For example, in 1999, the Legislature enacted Chapter 588
4 of the Statutes of 1999, effective January 1, 2000, which
5 established a state registry of domestic partnerships. In 2002, the
6 Legislature enacted Chapter 447 of the Statutes of 2002, effective
7 July 1, 2003, which granted registered domestic partners the same
8 intestate succession rights with respect to separate property as
9 spouses. In 2003, the Legislature enacted Chapter 421 of the
10 Statutes of 2003, effective January 1, 2005, which extended to
11 registered domestic partners nearly all of the rights and
12 responsibilities of spouses under state law that had not been
13 provided by prior domestic partner legislation. And, in 2005, the
14 Legislature enacted Chapter 417 of the Statutes of 2005, which
15 amended Section 62 of the Revenue and Taxation Code concerning
16 valuation and taxation of real property, to exclude property
17 transfers between registered domestic partners from the definition
18 of “change in ownership” for purposes of property tax
19 reassessment. The Legislature has intended a liberal reading of
20 these laws and this act builds upon this existing framework.

21 (d) Although it intended to protect family members during life
22 crises and to reduce discrimination on the bases of sex and sexual
23 orientation in a manner consistent with the California Constitution,
24 Chapter 417 of the Statutes of 2005 did not expressly exempt
25 transfers from one registered domestic partner to the other domestic
26 partner that resulted from the death of a partner prior to January
27 1, 2006; the act also did not expressly exempt transfers to a
28 surviving nonregistered domestic partner that occurred before it
29 was possible for domestic partners to secure protection against
30 property tax reassessment by registering their partnership with the
31 state.

32 (e) Protection against reassessment of family owned real
33 property and resulting increases in property taxes can be a critical
34 bulwark against financial hardship and the loss of the family home
35 or business when a family member dies or a family relationship
36 ends in divorce or dissolution of a domestic partnership. The same
37 is true for domestic partners whose relationships predated
38 California’s protective legislation. Many domestic partners whose
39 property was reassessed due to the death of one partner or the
40 dissolution of the domestic partnership have been forced by the

1 resulting increase in property taxes to sell the family home. Those
2 domestic partners who have retained ownership and have been
3 paying increased property taxes are being treated unequally in a
4 manner inconsistent with the goal of the domestic partnership laws.

5 (f) Many lesbian, gay, and bisexual Californians continue to
6 face economic discrimination, despite forming lasting, committed,
7 and caring relationships with persons of the same sex according
8 to the laws of this state. These couples build lives together, as do
9 spouses, by purchasing property and creating and operating family
10 businesses. Expanding the rights of domestic partners with respect
11 to property ownership would further California's compelling
12 interests in promoting family relationships and protecting family
13 members during life crises, and would reduce discrimination on
14 the bases of sex and sexual orientation in a manner warranted by
15 the California Constitution.

16 (g) Therefore, the Legislature finds and declares that this act
17 serves a public purpose of the state.

18 SEC. 2. Section 62 of the Revenue and Taxation Code is
19 amended to read:

20 62. Change in ownership shall not include:

21 (a) (1) Any transfer between coowners that results in a change
22 in the method of holding title to the real property transferred
23 without changing the proportional interests of the coowners in that
24 real property, such as a partition of a tenancy in common.

25 (2) Any transfer between an individual or individuals and a legal
26 entity or between legal entities, such as a cotenancy to a
27 partnership, a partnership to a corporation, or a trust to a cotenancy,
28 that results solely in a change in the method of holding title to the
29 real property and in which proportional ownership interests of the
30 transferors and transferees, whether represented by stock,
31 partnership interest, or otherwise, in each and every piece of real
32 property transferred, remain the same after the transfer. The
33 provisions of this paragraph shall not apply to transfers also
34 excluded from change in ownership under the provisions of
35 subdivision (b) of Section 64.

36 (b) Any transfer for the purpose of perfecting title to the
37 property.

38 (c) (1) The creation, assignment, termination, or reconveyance
39 of a security interest; or (2) the substitution of a trustee under a
40 security instrument.

1 (d) Any transfer by the trustor, or by the trustor's spouse *or*
2 *registered domestic partner*, or by both, into a trust for so long as
3 (1) the transferor is the present beneficiary of the trust, or (2) the
4 trust is revocable; or any transfer by a trustee of such a trust
5 described in either clause (1) or (2) back to the trustor; or, any
6 creation or termination of a trust in which the trustor retains the
7 reversion and in which the interest of others does not exceed 12
8 years duration.

9 (e) Any transfer by an instrument whose terms reserve to the
10 transferor an estate for years or an estate for life. However, the
11 termination of such an estate for years or estate for life shall
12 constitute a change in ownership, except as provided in subdivision
13 (d) and in Section 63.

14 (f) The creation or transfer of a joint tenancy interest if the
15 transferor, after the creation or transfer, is one of the joint tenants
16 as provided in subdivision (b) of Section 65.

17 (g) Any transfer of a lessor's interest in taxable real property
18 subject to a lease with a remaining term (including renewal options)
19 of 35 years or more. For the purpose of this subdivision, for
20 1979–80 and each year thereafter, it shall be conclusively presumed
21 that all homes eligible for the homeowners' exemption, other than
22 manufactured homes located on rented or leased land and subject
23 to taxation pursuant to Part 13 (commencing with Section 5800)
24 and floating homes subject to taxation pursuant to Section 229,
25 that are on leased land have a renewal option of at least 35 years
26 on the lease of that land, whether or not in fact that renewal option
27 exists in any contract or agreement.

28 (h) Any purchase, redemption, or other transfer of the shares or
29 units of participation of a group trust, pooled fund, common trust
30 fund, or other collective investment fund established by a financial
31 institution.

32 (i) Any transfer of stock or membership certificate in a housing
33 cooperative that was financed under one mortgage, provided that
34 mortgage was insured under Section 213, 221(d)(3), 221(d)(4), or
35 236 of the National Housing Act, as amended, or that housing
36 cooperative was financed or assisted pursuant to Section 514, 515,
37 or 516 of the Housing Act of 1949 or Section 202 of the Housing
38 Act of 1959, or the housing cooperative was financed by a direct
39 loan from the California Housing Finance Agency, and provided
40 that the regulatory and occupancy agreements were approved by

1 the governmental lender or insurer, and provided that the transfer
2 is to the housing cooperative or to a person or family qualifying
3 for purchase by reason of limited income. Any subsequent transfer
4 from the housing cooperative to a person or family not eligible for
5 state or federal assistance in reduction of monthly carrying charges
6 or interest reduction assistance by reason of the income level of
7 that person or family shall constitute a change of ownership.

8 (j) Any transfer during the period March 1, 1975, to March 1,
9 1981, between coowners in any property that was held by them as
10 coowners for all or part of that period, and which was eligible for
11 a homeowner's exemption during the period of the coownership,
12 notwithstanding any other provision of this chapter. Any transferee
13 whose interest was revalued in contravention of the provisions of
14 this subdivision shall obtain a reversal of that revaluation with
15 respect to the 1980-81 assessment year and thereafter, upon
16 application to the county assessor of the county in which the
17 property is located filed on or before March 26, 1982. No refunds
18 shall be made under this subdivision for any assessment year prior
19 to the 1980-81 fiscal year.

20 (k) Any transfer of property or an interest therein between a
21 corporation sole, a religious corporation, a public benefit
22 corporation, and a holding corporation as defined in Section 23701h
23 holding title for the benefit of any of these corporations, or any
24 combination thereof (including any transfer from one entity to the
25 same type of entity), provided that both the transferee and transferor
26 are regulated by laws, rules, regulations, or canons of the same
27 religious denomination.

28 (l) Any transfer, that would otherwise be a transfer subject to
29 reappraisal under this chapter, between or among the same parties
30 for the purpose of correcting or reforming a deed to express the
31 true intentions of the parties, provided that the original relationship
32 between the grantor and grantee is not changed.

33 (m) Any intrafamily transfer of an eligible dwelling unit from
34 a parent or parents or legal guardian or guardians to a minor child
35 or children or between or among minor siblings as a result of a
36 court order or judicial decree due to the death of the parent or
37 parents. As used in this subdivision, "eligible dwelling unit" means
38 the dwelling unit that was the principal place of residence of the
39 minor child or children prior to the transfer and remains the

1 principal place of residence of the minor child or children after
2 the transfer.

3 (n) Any transfer of an eligible dwelling unit, whether by will,
4 devise, or inheritance, from a parent or parents to a child or
5 children, or from a guardian or guardians to a ward or wards, if
6 the child, children, ward, or wards have been disabled, as provided
7 in subdivision (e) of Section 12304 of the Welfare and Institutions
8 Code, for at least five years preceding the transfer and if the child,
9 children, ward, or wards have adjusted gross income that, when
10 combined with the adjusted gross income of a spouse or spouses,
11 parent or parents, and child or children, does not exceed twenty
12 thousand dollars (\$20,000) in the year in which the transfer occurs.
13 As used in this subdivision, “child” or “ward” includes a minor or
14 an adult. As used in this subdivision, “eligible dwelling unit” means
15 the dwelling unit that was the principal place of residence of the
16 child or children, or ward or wards for at least five years preceding
17 the transfer and remains the principal place of residence of the
18 child or children, or ward or wards after the transfer. Any transferee
19 whose property was reassessed in contravention of the provisions
20 of this subdivision for the 1984–85 assessment year shall obtain
21 a reversal of that reassessment upon application to the county
22 assessor of the county in which the property is located. Application
23 by the transferee shall be made to the assessor no later than 30
24 days after the later of either the transferee’s receipt of notice of
25 reassessment pursuant to Section 75.31 or the end of the 1984–85
26 fiscal year.

27 (o) Any transfer of a possessory interest in tax-exempt real
28 property subject to a sublease with a remaining term, including
29 renewal options, that exceeds half the length of the remaining term
30 of the leasehold, including renewal options.

31 (p) ~~(1) Commencing with the lien date for the 2006–07 fiscal~~
32 ~~year on January 1, 2000,~~ any transfer between registered domestic
33 partners, as defined in Section 297 of the Family Code, including,
34 but not limited to:

35 ~~(1)~~

36 (A) Transfers to a trustee for the beneficial use of a registered
37 domestic partner, or the surviving registered domestic partner of
38 a deceased transferor, or by a trustee of such a trust to the registered
39 domestic partner of the trustor.

40 ~~(2)~~

1 (B) Transfers that take effect upon the death of a registered
2 domestic partner.

3 ~~(3)~~

4 (C) Transfers to a registered domestic partner or former
5 registered domestic partner in connection with a property settlement
6 agreement or decree of dissolution of a registered domestic
7 partnership or legal separation.

8 ~~(4)~~

9 (D) The creation, transfer, or termination, solely between
10 registered domestic partners, of any coowner's interest.

11 ~~(5)~~

12 (E) The distribution of a legal entity's property to a registered
13 domestic partner or former registered domestic partner in exchange
14 for the interest of the registered domestic partner in the legal entity
15 in connection with a property settlement agreement or a decree of
16 dissolution of a registered domestic partnership or legal separation.

17 (2) *Any transfer between registered domestic partners that*
18 *occurred on or after January 1, 2000, that was classified as a*
19 *change in ownership that resulted in appraisal at full cash value*
20 *as of the date of the change in ownership under Section 75.10 shall*
21 *entitle the transferee registered domestic partner to a reassessment*
22 *by the assessor under this paragraph as if that transfer had not*
23 *occurred. The transferee shall submit a request for reassessment*
24 *under this paragraph to the assessor on or before January 1, 2009.*
25 *Any change in the adjusted base year value of the property*
26 *acquired resulting from the application of this paragraph shall be*
27 *deemed to be effective on the first day of the month following the*
28 *month in which the request for assessment was submitted. This*
29 *paragraph shall be liberally construed to provide the benefits of*
30 *this subdivision and Article XIII A of the California Constitution*
31 *to registered domestic partners.*

32 (q) (1) *Any transfer between nonregistered domestic partners*
33 *that occurred on or after January 1, 2000, and before January 1,*
34 *2007, including, but not limited to:*

35 (A) *Transfers to a trustee for the beneficial use of a*
36 *nonregistered domestic partner, or the surviving nonregistered*
37 *domestic partner of a deceased transferor, or by a trustee of such*
38 *a trust to the nonregistered domestic partner of the trustor.*

39 (B) *Transfers that take effect upon the death of a nonregistered*
40 *domestic partner.*

1 (C) *Transfers to a nonregistered domestic partner or former*
2 *nonregistered domestic partner in connection with a property*
3 *settlement agreement or judicial distribution of assets upon*
4 *termination of a nonregistered domestic partnership.*

5 (D) *The creation, transfer, or termination, solely between*
6 *nonregistered domestic partners, of any coowner's interest.*

7 (E) *The distribution of a legal entity's property to a*
8 *nonregistered domestic partner or former nonregistered domestic*
9 *partner in exchange for the interest of the nonregistered domestic*
10 *partner in the legal entity in connection with a property settlement*
11 *agreement or judicial distribution of assets upon termination of a*
12 *nonregistered domestic partnership.*

13 (2) *For purposes of this section, nonregistered domestic partner*
14 *means a person who does both of the following:*

15 (A) *Signs an affidavit that states all of the following:*

16 (i) *That the person and his or her domestic partner shared a*
17 *common residence at the time of transfer.*

18 (ii) *That neither the person nor his or her domestic partner were*
19 *married to someone else or in another domestic partnership that*
20 *had not been terminated, dissolved, or adjudged a nullity at the*
21 *time of transfer.*

22 (iii) *That the person and his or her domestic partner are not*
23 *related by blood in a manner that would prevent them from being*
24 *married to each other in this state.*

25 (iv) *That the person and his or her domestic partner were at*
26 *least 18 years old at the time of transfer.*

27 (v) *That either of the requirements are met:*

28 (I) *That the person and his or her domestic partner are members*
29 *of the same sex.*

30 (II) *That either the person or his or her domestic partner, or*
31 *both, satisfied the eligibility requirements for old age insurance*
32 *benefits pursuant to Title II of the Social Security Act (42 U.S.C.*
33 *Sec. 402a) or is an individual as described in Title XVI of the*
34 *Social Security Act (42 U.S.C. Sec. 1381) at the time of transfer.*

35 (vi) *That the person and his or her domestic partner were*
36 *capable of consenting to the domestic partnership at the time of*
37 *transfer.*

38 (vii) *That the nonregistered domestic partnership ended either*
39 *due to the death of the affiant's former domestic partner or the*
40 *dissolution of the partnership.*

- 1 (B) *Demonstrates that any two of the following existed with his*
2 *or her former domestic partner during the partnership:*
- 3 (i) *A civil union, domestic partnership registration, or reciprocal*
4 *beneficiary registration with any foreign government, state*
5 *government, or local government.*
- 6 (ii) *Joint ownership of real property or an automobile.*
- 7 (iii) *Joint ownership of a bank account.*
- 8 (iv) *Joint signatories on a lease for a residence.*
- 9 (v) *A residential utility bill account held in both names, either*
10 *separately or jointly.*
- 11 (vi) *A designation as domestic partners for employee benefits*
12 *purposes or health insurance purposes.*
- 13 (vii) *An adoption by either domestic partner of a child of the*
14 *other domestic partner, a joint adoption by both domestic partners*
15 *of a child, or any other form of judgment establishing either*
16 *domestic partner's parentage or guardianship of a child of his or*
17 *her domestic partner, or establishing both domestic partner's*
18 *parentage or guardianship of a child.*
- 19 (viii) *The execution by either nonregistered domestic partner*
20 *of a will, trust, or other estate planning document designating his*
21 *or her domestic partner or any child or children of his or her*
22 *domestic partner as a beneficiary.*
- 23 (3) *In lieu of one of the criteria described in clauses (i) to (viii),*
24 *inclusive, of subparagraph (B) of paragraph (2):*
- 25 (A) *If the partnership terminated due to the death of a partner,*
26 *the surviving partner may instead provide a signed affidavit from*
27 *a person who knew the surviving partner and deceased partner at*
28 *the time of death of the deceased partner stating that the couple*
29 *shared a common residence and would have satisfied the*
30 *requirements of subparagraph (A) of paragraph (2) of subdivision*
31 *(a).*
- 32 (B) *If the partnership terminated for reasons other than the*
33 *death of a partner, both partners may instead provide signed*
34 *affidavits stating that both partners satisfied the requirements of*
35 *subparagraph (A) of paragraph (2).*
- 36 (4) *Any transfer between nonregistered domestic partners that*
37 *occurred on or after January 1, 2000, and before January 1, 2009,*
38 *that was classified as a change in ownership that resulted in*
39 *appraisal at full cash value on the date of the change in ownership*
40 *under Section 75.10 shall entitle the transferee nonregistered*

1 *domestic partner to a reassessment by the assessor under this*
2 *paragraph as if that transfer had not occurred. The transferee*
3 *shall submit a request for reassessment under this paragraph to*
4 *the assessor on or before June 30, 2009. Any change in the adjusted*
5 *base year value of the property acquired resulting from the*
6 *application of this paragraph shall be deemed to be effective on*
7 *the first day of the month following the month in which the request*
8 *for assessment was submitted.*

9 SEC. 3. Section 5096 of the Revenue and Taxation Code is
10 amended to read:

11 5096. Any taxes paid before or after delinquency shall be
12 refunded if they were:

13 (a) Paid more than once.

14 (b) Erroneously or illegally collected.

15 (c) Illegally assessed or levied.

16 (d) Paid on an assessment in excess of the ratio of assessed value
17 to the full value of the property as provided in Section 401 by
18 reason of the assessor's clerical error or excessive or improper
19 assessments attributable to erroneous property information supplied
20 by the assessee.

21 (e) Paid on an assessment of improvements when the
22 improvements did not exist on the lien date.

23 (f) Paid on an assessment in excess of the equalized value of
24 the property as determined pursuant to Section 1613 by the county
25 board of equalization.

26 (g) Paid on an assessment in excess of the value of the property
27 as determined by the assessor pursuant to Section 469.

28 (h) *Paid on an assessment that is subject to reassessment*
29 *pursuant to paragraph (2) of subdivision (p) of Section 62 or*
30 *paragraph (4) of subdivision (q) of Section 62.*

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

36 SEC. 5. Notwithstanding Section 2229 of the Revenue and
37 Taxation Code, no appropriation is made by this act and the state
38 shall not reimburse any local agency for any property tax revenues
39 lost by it pursuant to this act.

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

O