

Introduced by Senator Migden

January 22, 2008

An act to add Section 62.3 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy. An act to amend Section 1021.5 of the Code of Civil Procedure, relating to attorney's fees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1113, as amended, Migden. ~~Property taxation: change in ownership: exclusion. Attorney's fee and costs.~~

Existing law authorizes a court, upon motion, to award attorney's fees to a successful party against one or more opposing parties in any action that has resulted in the enforcement of an important right affecting the public interest, if certain conditions are met.

This bill would authorize the court to award attorney's fees and costs, including nonstatutory costs and expert witness fees, pursuant to this provision.

~~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. Existing property tax law specifies those circumstances in which the transfer of ownership interests results in a change in ownership of the real property, and provides that certain transfers do not result in a change of ownership.~~

~~This bill would provide that a transfer of a cotenancy interest, as defined, in real property from one cotenant to the other that takes effect~~

upon the death of the transferor cotenant does not constitute a change of ownership, as provided.

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.

This bill would take effect immediately as a tax levy.

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

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

1 SECTION 1. Section 1021.5 of the Code of Civil Procedure is
2 amended to read:

3 1021.5. (a) Upon motion, a court may award ~~attorneys'~~
4 ~~attorney's fees and costs, including nonstatutory costs and expert~~
5 ~~witness fees, to a successful party against one or more opposing~~
6 ~~parties in any action which that has resulted in the enforcement of~~
7 ~~an important right affecting the public interest if: (a) a all of the~~
8 ~~following are met:~~

9 (1) A significant benefit, whether pecuniary or nonpecuniary,
10 has been conferred on the general public or a large class of persons;
11 ~~(b) the.~~

12 (2) The necessity and financial burden of private enforcement,
13 or of enforcement by one public entity against another public entity,
14 are such as to make the award appropriate, ~~and (c) such.~~

15 (3) Those fees should not, in the interest of justice, be paid out
16 of the recovery, if any. ~~With~~

17 (b) ~~With~~ respect to actions involving public entities, this section
18 applies to allowances against, but not in favor of, public entities,
19 and no claim shall be required to be filed therefor, unless one or
20 more successful parties and one or more opposing parties are public
21 entities, in which case no claim shall be required to be filed therefor
22 under Part 3 (commencing with Section 900) of Division 3.6 of
23 Title 1 of the Government Code.

24 ~~Attorneys'~~

1 (c) Attorney's fees awarded to a public entity pursuant to this
2 section shall not be increased or decreased by a multiplier based
3 upon extrinsic circumstances, as discussed in *Serrano v. Priest*;
4 (1977) 20-Cal. 3d Cal.3d 25, 49.

5 SECTION 1. Section 62.3 is added to the Revenue and Taxation
6 Code, to read:

7 62.3.—(a) Notwithstanding any other provision in this chapter,
8 a change in ownership shall not include a transfer of a cotenancy
9 interest in real property from one cotenant to the other that takes
10 effect upon the death of the transferor cotenant where all of the
11 following conditions apply:

12 (1) The transfer is solely by and between either of the following:

13 (A) Two joint tenants who together own 100 percent of the real
14 property in joint tenancy.

15 (B) Two individuals who together own 100 percent of the real
16 property as tenants in common.

17 (2) As a result of the death of the transferor cotenant, the
18 deceased cotenant's tenancy in common or joint tenancy interest
19 in the real property is transferred to the surviving cotenant, which
20 results in the surviving cotenant holding a 100 percent ownership
21 interest in the real property immediately after the transfer, thereby
22 terminating the cotenancy.

23 (3) The real property constitutes a principal residence.

24 (b) With respect to real property that does not constitute a
25 principal residence under paragraph (3) of subdivision (a), the
26 change in ownership exclusion provided by subdivision (a) shall
27 still apply if paragraphs (1) and (2) of subdivision (a) are satisfied,
28 but shall be subject to an aggregate maximum exclusion limitation
29 of five hundred thousand dollars (\$500,000) of the full cash value
30 of the real property that otherwise qualifies for the exclusion under
31 subdivision (a).

32 (c) A transfer of cotenancy interest in real property from one
33 cotenant to the other shall take effect upon the death of the
34 transferor cotenant under any of the following circumstances:

35 (1) Pursuant to the transferor cotenant's will or trust upon the
36 death of the transferor cotenant.

37 (2) Through intestate succession from the transferor cotenant.

38 (3) Through a declaration in lieu of probate upon the death of
39 the transferor cotenant.

40 (4) By operation of law upon the death of the transferor cotenant.

1 ~~(d) The exclusion provided by this section shall not apply to~~
2 ~~any transfer of real property interests for which a separate exclusion~~
3 ~~in this chapter applies.~~

4 ~~(e) For purposes of this section, both of the following apply:~~

5 ~~(1) “Cotenancy interest” means an interest in real property held~~
6 ~~only as tenants in common or joint tenants.~~

7 ~~(2) “Principal residence” means a dwelling eligible for either~~
8 ~~the homeowners’ exemption or the disabled veterans’ residence~~
9 ~~exemption held by either of the following:~~

10 ~~(A) The transferor cotenant immediately preceding his or her~~
11 ~~death.~~

12 ~~(B) The surviving cotenant immediately upon acquisition of~~
13 ~~100 percent ownership of the dwelling.~~

14 ~~(C) A transfer of a cotenancy interest in real property from one~~
15 ~~cotenant to the other that takes effect upon the death of the~~
16 ~~transferor cotenant.~~

17 ~~SEC. 2. Notwithstanding Section 2229 of the Revenue and~~
18 ~~Taxation Code, no appropriation is made by this act and the state~~
19 ~~shall not reimburse any local agency for any property tax revenues~~
20 ~~lost by it pursuant to this act.~~

21 ~~SEC. 3. This act provides for a tax levy within the meaning of~~
22 ~~Article IV of the Constitution and shall go into immediate effect.~~