

AMENDED IN ASSEMBLY JUNE 10, 2008

AMENDED IN ASSEMBLY JUNE 5, 2008

AMENDED IN ASSEMBLY MAY 8, 2008

AMENDED IN SENATE APRIL 1, 2008

SENATE BILL

No. 1233

Introduced by Senator Harman

February 14, 2008

An act to amend Section 63.1 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1233, as amended, Harman. Property tax: change in ownership: administration.

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. The California Constitution excludes from a "change in ownership" specified property transfers of a principal residence and the first \$1,000,000 of the value of other real property between parents and their children, as defined by the Legislature. Existing law requires those seeking this exclusion to file a claim within specified times.

This bill would require, upon written notification by the county assessor of potential eligibility for exclusion, a transferee eligible for the exclusion to file a certified claim for exclusion within the time specified in the notice. This bill would authorize the assessor, if a

certified claim for exclusion is not filed within the time specified in the notice, to send a 2nd notice of potential eligibility for exclusion, notifying the transferee that a certified claim has not been received and that reassessment of the property will commence, as specified. This bill would provide that if the eligible transferee fails to timely file the claim and subsequently qualifies for exclusion, the assessor may require the eligible transferee to be subject to a one-time processing fee, as specified.

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

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

1 SECTION 1. Section 63.1 of the Revenue and Taxation Code
2 is amended to read:

3 63.1. (a) Notwithstanding any other provision of this chapter,
4 a change in ownership shall not include the following purchases
5 or transfers for which a claim is filed pursuant to this section:

6 (1) (A) The purchase or transfer of real property which is the
7 principal residence of an eligible transferor in the case of a purchase
8 or transfer between parents and their children.

9 (B) A purchase or transfer of a principal residence from a foster
10 child to the child's biological parent shall not be excluded under
11 subparagraph (A) if the transferor child received that principal
12 residence, or interest therein, from a foster parent through a
13 purchase or transfer that was excluded under subparagraph (A).

14 (2) The purchase or transfer of the first one million dollars
15 (\$1,000,000) of full cash value of all other real property of an
16 eligible transferor in the case of a purchase or transfer between
17 parents and their children.

18 (3) (A) Subject to subparagraph (B), the purchase or transfer
19 of real property described in paragraphs (1) and (2) of subdivision
20 (a) occurring on or after March 27, 1996, between grandparents
21 and their grandchild or grandchildren, if all of the parents of that
22 grandchild or those grandchildren, who qualify as the children of
23 the grandparents, are deceased as of the date of purchase or transfer.
24 Notwithstanding any other provision of law, for the lien date for
25 the 2006–07 fiscal year and each fiscal year thereafter, in
26 determining whether “all of the parents of that grandchild or those
27 grandchildren, who qualify as the children of the grandparents,

1 are deceased as of the date of purchase or transfer,” a son-in-law
2 or daughter-in-law of the grandparent that is a stepparent to the
3 grandchild need not be deceased on the date of the transfer.

4 (B) A purchase or transfer of a principal residence shall not be
5 excluded pursuant to subparagraph (A) if the transferee grandchild
6 or grandchildren also received a principal residence, or interest
7 therein, through another purchase or transfer that was excludable
8 pursuant to paragraph (1) of subdivision (a). The full cash value
9 of any real property, other than a principal residence, that was
10 transferred to the grandchild or grandchildren pursuant to a
11 purchase or transfer that was excludable pursuant to paragraph (2)
12 of subdivision (a) and the full cash value of a principal residence
13 that fails to qualify for exclusion as a result of the preceding
14 sentence shall be included in applying, for purposes of paragraph
15 (2) of subdivision (a), the one million dollar (\$1,000,000) full cash
16 value limit specified in paragraph (2) of subdivision (a).

17 (b) (1) For purposes of paragraph (1) of subdivision (a),
18 “principal residence” means a dwelling that is eligible for a
19 homeowners’ exemption or a disabled veterans’ exemption as a
20 result of the transferor’s ownership and occupation of the dwelling.
21 “Principal residence” includes only that portion of the land
22 underlying the residence that consists of an area of reasonable size
23 that is used as a site for the residence.

24 (2) For purposes of paragraph (2) of subdivision (a), the
25 one-million-dollar (\$1,000,000) exclusion shall apply separately
26 to each eligible transferor with respect to all purchases by and
27 transfers to eligible transferees on and after November 6, 1986, of
28 real property, other than the principal residence, of that eligible
29 transferor. The exclusion shall not apply to any property in which
30 the eligible transferor’s interest was received through a transfer,
31 or transfers, excluded from change in ownership by the provisions
32 of either subdivision (f) of Section 62 or subdivision (b) of Section
33 65, unless the transferor qualifies as an original transferor under
34 subdivision (b) of Section 65. In the case of any purchase or
35 transfer subject to this paragraph involving two or more eligible
36 transferors, the transferors may elect to combine their separate
37 one-million-dollar (\$1,000,000) exclusions and, upon making that
38 election, the combined amount of their separate exclusions shall
39 apply to any property jointly sold or transferred by the electing
40 transferors, provided that in no case shall the amount of full cash

1 value of real property of any one eligible transferor excluded under
2 this election exceed the amount of the transferor's separate unused
3 exclusion on the date of the joint sale or transfer.

4 (c) As used in this section:

5 (1) "Purchase or transfer between parents and their children"
6 means either a transfer from a parent or parents to a child or
7 children of the parent or parents or a transfer from a child or
8 children to a parent or parents of the child or children. For purposes
9 of this section, the date of any transfer between parents and their
10 children under a will or intestate succession shall be the date of
11 the decedent's death, if the decedent died on or after November
12 6, 1986.

13 (2) "Purchase or transfer of real property between grandparents
14 and their grandchild or grandchildren" means a purchase or transfer
15 on or after March 27, 1996, from a grandparent or grandparents
16 to a grandchild or grandchildren if all of the parents of that
17 grandchild or those grandchildren who qualify as the children of
18 the grandparents are deceased as of the date of the transfer. For
19 purposes of this section, the date of any transfer between
20 grandparents and their grandchildren under a will or by intestate
21 succession shall be the date of the decedent's death.
22 Notwithstanding any other provision of law, for the lien date for
23 the 2006-07 fiscal year and each fiscal year thereafter, in
24 determining whether "all of the parents of that grandchild or those
25 grandchildren, who qualify as the children of the grandparents,
26 are deceased as of the date of purchase or transfer," a son-in-law
27 or daughter-in-law of the grandparent that is a stepparent to the
28 grandchild need not be deceased on the date of the transfer.

29 (3) "Children" means any of the following:

30 (A) Any child born of the parent or parents, except a child, as
31 defined in subparagraph (D), who has been adopted by another
32 person or persons.

33 (B) Any stepchild of the parent or parents and the spouse of that
34 stepchild while the relationship of stepparent and stepchild exists.
35 For purposes of this paragraph, the relationship of stepparent and
36 stepchild shall be deemed to exist until the marriage on which the
37 relationship is based is terminated by divorce, or, if the relationship
38 is terminated by death, until the remarriage of the surviving
39 stepparent.

1 (C) Any son-in-law or daughter-in-law of the parent or parents.
2 For the purposes of this paragraph, the relationship of parent and
3 son-in-law or daughter-in-law shall be deemed to exist until the
4 marriage on which the relationship is based is terminated by
5 divorce, or, if the relationship is terminated by death, until the
6 remarriage of the surviving son-in-law or daughter-in-law.

7 (D) Any child adopted by the parent or parents pursuant to
8 statute, other than an individual adopted after reaching the age of
9 18 years.

10 (E) Any foster child of a state-licensed foster parent, if that child
11 was not, because of a legal barrier, adopted by the foster parent or
12 foster parents before the child aged out of the foster care system.
13 For purposes of this paragraph, the relationship between a foster
14 child and foster parent shall be deemed to exist until terminated
15 by death. However, for purposes of a transfer that occurs on the
16 date of death, the relationship shall be deemed to exist on the date
17 of death.

18 (4) “Grandchild” or “grandchildren” means any child or children
19 of the child or children of the grandparent or grandparents.

20 (5) “Full cash value” means full cash value, as defined in Section
21 2 of Article XIII A of the California Constitution and Section 110.1,
22 with any adjustments authorized by those sections, and the full
23 value of any new construction in progress, determined as of the
24 date immediately prior to the date of a purchase by or transfer to
25 an eligible transferee of real property subject to this section.

26 (6) “Eligible transferor” means a grandparent, parent, or child
27 of an eligible transferee.

28 (7) “Eligible transferee” means a parent, child, or grandchild
29 of an eligible transferor.

30 (8) “Real property” means real property as defined in Section
31 104. Real property does not include any interest in a legal entity.

32 (9) “Transfer” includes, and is not limited to, any transfer of
33 the present beneficial ownership of property from an eligible
34 transferor to an eligible transferee through the medium of an inter
35 vivos or testamentary trust.

36 (10) “Social security number” also includes a taxpayer
37 identification number issued by the Internal Revenue Service in
38 the case in which the taxpayer is a foreign national who cannot
39 obtain a social security number.

1 (d) (1) The exclusions provided for in subdivision (a) shall not
2 be allowed unless the eligible transferee, the transferee's legal
3 representative, or the executor or administrator of the transferee's
4 estate files a claim with the assessor for the exclusion sought and
5 furnishes to the assessor each of the following:

6 (A) A written certification by the transferee, the transferee's
7 legal representative, or the executor or administrator of the
8 transferee's estate, signed and made under penalty of perjury that
9 the transferee is a parent, child, or grandchild of the transferor and
10 that the transferor is his or her parent, child, or grandparent. In the
11 case of a grandparent-grandchild transfer, the written certification
12 shall also include a certification that all the parents of the
13 grandchild or grandchildren who qualify as children of the
14 grandparents were deceased as of the date of the purchase or
15 transfer and that the grandchild or grandchildren did or did not
16 receive a principal residence excludable under paragraph (1) of
17 subdivision (a) from the deceased parents, and that the grandchild
18 or grandchildren did or did not receive real property other than a
19 principal residence excludable under paragraph (2) of subdivision
20 (a) from the deceased parents. The claimant shall provide legal
21 substantiation of any matter certified pursuant to this subparagraph
22 at the request of the county assessor.

23 (B) A written certification by the transferor, the transferor's
24 legal representative, or the executor or administrator of the
25 transferor's estate, signed and made under penalty of perjury that
26 the transferor is a grandparent, parent, or child of the transferee
27 and that the transferor is seeking the exclusion under this section
28 and will not file a claim to transfer the base year value of the
29 property under Section 69.5.

30 (C) A written certification shall also include either or both of
31 the following:

32 (i) If the purchase or transfer of real property includes the
33 purchase or transfer of residential real property, a certification that
34 the residential real property is or is not the transferor's principal
35 residence.

36 (ii) If the purchase or transfer of real property includes the
37 purchase or transfer of real property other than the transferor's
38 principal residence, a certification that other real property of the
39 transferor that is subject to this section has or has not been
40 previously sold or transferred to an eligible transferee, the total

1 amount of full cash value, as defined in subdivision (c), of any
2 real property subject to this section that has been previously sold
3 or transferred by that transferor to eligible transferees, the location
4 of that real property, the social security number of each eligible
5 transferor, and the names of the eligible transferees of that property.

6 (D) If there are multiple transferees, the certification and
7 signature may be made by any one of the transferees, if both of
8 the following conditions are met:

9 (i) The transferee has actual knowledge that, and the certification
10 signed by the transferee states that, all of the transferees are eligible
11 transferees within the meaning of this section.

12 (ii) The certification is signed by the transferee as a true
13 statement made under penalty of perjury.

14 (E) In the case of a transfer between a foster parent and foster
15 child, the claim filed with the assessor shall include a certified
16 copy of the court decision regarding the foster child status of the
17 individual and a certified statement from the appropriate county
18 agency stating that the foster child was not, because of a legal
19 barrier, adopted by the foster parent or foster parents. Upon a
20 request by the county assessor, the claimant also shall provide to
21 the assessor legal substantiation of any matter certified under this
22 subparagraph.

23 (2) If the full cash value of the real property purchased by or
24 transferred to the transferee exceeds the permissible exclusion of
25 the transferor or the combined permissible exclusion of the
26 transferors, in the case of a purchase or transfer from two or more
27 joint transferors, taking into account any previous purchases by
28 or transfers to an eligible transferee from the same transferor or
29 transferors, the transferee shall specify in his or her claim the
30 amount and the allocation of the exclusion he or she is seeking.
31 Within any appraisal unit, as determined in accordance with
32 subdivision (d) of Section 51 by the assessor of the county in which
33 the real property is located, the exclusion shall be applied only on
34 a pro rata basis, however, and shall not be applied to a selected
35 portion or portions of the appraisal unit.

36 (e) (1) The State Board of Equalization shall design the form
37 for claiming eligibility. Except as provided in paragraph (2), any
38 claim under this section shall be filed:

39 (A) For transfers of real property between parents and their
40 children occurring prior to September 30, 1990, within three years

1 after the date of the purchase or transfer of real property for which
2 the claim is filed.

3 (B) For transfers of real property between parents and their
4 children occurring on or after September 30, 1990, and for the
5 purchase or transfer of real property between grandparents and
6 their grandchildren occurring on or after March 27, 1996, within
7 three years after the date of the purchase or transfer of real property
8 for which the claim is filed, or prior to transfer of the real property
9 to a third party, whichever is earlier.

10 (C) Notwithstanding subparagraphs (A) and (B), a claim shall
11 be deemed to be timely filed if it is filed within six months after
12 the date of mailing of a notice of supplemental or escape
13 assessment, issued as a result of the purchase or transfer of real
14 property for which the claim is filed.

15 (2) In the case in which the real property subject to purchase or
16 transfer has not been transferred to a third party, a claim for
17 exclusion under this section that is filed subsequent to the
18 expiration of the filing periods set forth in paragraph (1) shall be
19 considered by the assessor, subject to all of the following
20 conditions:

21 (A) Any exclusion granted pursuant to that claim shall apply
22 commencing with the lien date of the assessment year in which
23 the claim is filed.

24 (B) Under any exclusion granted pursuant to that claim, the
25 adjusted full cash value of the subject real property in the
26 assessment year described in subparagraph (A) shall be the adjusted
27 base year value of the subject real property in the assessment year
28 in which the excluded purchase or transfer took place, factored to
29 the assessment year described in subparagraph (A) for both of the
30 following:

31 (i) Inflation as annually determined in accordance with
32 paragraph (1) of subdivision (a) of Section 51.

33 (ii) Any subsequent new construction occurring with respect to
34 the subject real property.

35 (3) (A) Unless otherwise expressly provided, the provisions of
36 this subdivision shall apply to any purchase or transfer of real
37 property that occurred on or after November 6, 1986.

38 (B) Paragraph (2) shall apply to purchases or transfers between
39 parents and their children that occurred on or after November 6,

1 1986, and to purchases or transfers between grandparents and their
2 grandchildren that occurred on or after March 27, 1996.

3 (4) For purposes of this subdivision, a transfer of real property
4 to a parent or child of the transferor shall not be considered a
5 transfer to a third party.

6 (f) The assessor may report quarterly to the State Board of
7 Equalization all purchases or transfers, other than purchases or
8 transfers involving a principal residence, for which a claim for
9 exclusion is made pursuant to subdivision (d). Each report shall
10 contain the assessor's parcel number for each parcel for which the
11 exclusion is claimed, the amount of each exclusion claimed, the
12 social security number of each eligible transferor, and any other
13 information the board may require in order to monitor the
14 one-million-dollar (\$1,000,000) limitation in paragraph (2) of
15 subdivision (a). In recognition of the state and local interests served
16 by the action made optional in this subdivision, the Legislature
17 encourages the assessor to continue taking the action formerly
18 mandated by this subdivision.

19 (g) This section shall apply to both voluntary transfers and
20 transfers resulting from a court order or judicial decree. Nothing
21 in this subdivision shall be construed as conflicting with paragraph
22 (1) of subdivision (c) or the general principle that transfers by
23 reason of death occur at the time of death.

24 (h) (1) Except as provided in paragraph (2), this section shall
25 apply to purchases and transfers of real property completed on or
26 after November 6, 1986, and shall not be effective for any change
27 in ownership, including a change in ownership arising on the date
28 of a decedent's death, that occurred prior to that date.

29 (2) This section shall apply to purchases or transfers of real
30 property between grandparents and their grandchildren occurring
31 on or after March 27, 1996, and, with respect to purchases or
32 transfers of real property between grandparents and their
33 grandchildren, shall not be effective for any change in ownership,
34 including a change in ownership arising on the date of a decedent's
35 death, that occurred prior to that date.

36 (i) A claim filed under this section is not a public document and
37 is not subject to public inspection, except that a claim shall be
38 available for inspection by the transferee and the transferor or their
39 respective spouse, the transferee's legal representative, the

1 transferor's legal representative, and the executor or administrator
2 of the transferee's or transferor's estate.

3 (j) (1) If the assessor notifies the transferee in writing of
4 potential eligibility for exclusion from change in ownership under
5 this section, a certified claim for exclusion shall be filed with the
6 assessor within 45 days of the date of the notice of potential
7 eligibility. If a certified claim for exclusion is not filed within 45
8 days, the assessor may send a second notice of potential eligibility
9 for exclusion, notifying the transferee that a certified claim for
10 exclusion has not been received and that reassessment of the
11 property will commence unless a certified claim for exclusion is
12 filed within 60 days of the date of the second notice of potential
13 eligibility. The second notice of potential eligibility shall indicate
14 whether a certified claim for exclusion that is not filed within 60
15 days will be subject to a processing fee as provided in paragraph
16 (2).

17 (2) If a certified claim for exclusion is not filed within 60 days
18 of the date of the second notice of potential eligibility and an
19 eligible transferee subsequently files a claim and qualifies for the
20 exclusion, the assessor may, *upon authorization by a county board*
21 *of supervisors*, require an eligible transferee to pay a one-time
22 processing fee ~~which~~, *collected at the time the claim is submitted,*
23 *and reimbursed by the assessor if the claim is ineligible. The fee*
24 *shall be subject to the provisions of Chapter 12.5 (commencing*
25 *with Section 54985) of Part 1 of Division 2 of Title 5 of the*
26 *Government Code, and which and shall not exceed the amount of*
27 *the actual and reasonable costs incurred by the assessor for*
28 *reassessment work done due to failure to file the claim for*
29 *exclusion or one hundred seventy-five dollars (\$175), whichever*
30 *is less. The proceeds of the fee shall be retained by the assessor*
31 *to offset the costs incurred by the assessor for reassessment work*
32 *done due to failure to file the claim for exclusion.*

33 (3) The failure to file a certified claim for exclusion within the
34 filing periods specified by this subdivision shall not be construed
35 to limit any exclusion from being granted pursuant to a claim filed
36 within the filing periods specified by subdivision (e).