

AMENDED IN ASSEMBLY MAY 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1332

Introduced by Assembly Member Salas

February 27, 2009

An act to amend Section 107.4 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1332, as amended, Salas. Taxation: military housing.

Existing property tax law requires that all property subject to tax be assessed at its full value, and includes certain possessory interests among those property interests that are subject to tax. Existing property tax law defines a taxable possessory interest to be a use that is independent, durable, and exclusive. Existing property tax law specifies that, for purposes of the definition of a taxable possessory interest, a possession or use is not independent if it is pursuant to a contract that includes, but is not limited to, a long-term lease for the private construction, renovation, rehabilitation, replacement, management, or maintenance of housing for active duty military personnel and their dependents, if the housing units and the private contractor constructing the housing meet specified criteria. Existing law specifies that one of these criteria is a requirement that any reduction, as specified, in property taxes on leased property used for military housing, as defined, inures solely to the benefit of the residents of the military housing through improvements.

This bill would delete the requirement that the housing be for military personnel and their dependents and instead specify that the housing be for military personnel or their dependents or both. This bill would clarify

that, for the purposes of the definition of a taxable possessory interest, any reduction, as specified, in property taxes on leased property used for military housing, as defined, would inure solely to the benefit of the residents of the military housing through improvements, including community improvements, as specified, and housing improvements, as specified, and the renovation and refurbishment of those improvements. This bill would authorize the private contractor to use the reasonable estimate of property tax savings to construct, or to secure financing for the construction of, the community and housing improvements to be constructed as part of the initial construction of the project, as defined. This bill would authorize the private contractor and the county assessor to agree to extend the time for the initial construction of the project, as specified. This bill would extend the time period the county assessor may make an escape assessment, as specified, by a period equal to the extension of the initial construction period agreed upon by the county assessor and the private contractor.

This bill would require the private contractor to submit specified information to the county assessor, as provided, and would require the private contractor’s response that was accepted by the military, and the binding project documents, for certain leases, to include specified information.

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 107.4 of the Revenue and Taxation Code
 2 is amended to read:
 3 107.4. (a) For purposes of paragraph (1) of subdivision (a) of
 4 Section 107, there is no independent possession or use of land or
 5 improvements if that possession or use is pursuant to a contract
 6 that includes, but is not limited to, a long-term lease, for the private
 7 construction, renovation, rehabilitation, replacement, management,
 8 or maintenance of housing for active duty military personnel or
 9 their dependents, or both, if all of the following criteria are met:
 10 (1) The military housing constructed and managed by private
 11 contractor is situated on a military facility under military control,
 12 and the construction of that housing is performed under military
 13 guidelines in the same manner as construction that is performed
 14 by the military.

1 (2) All services normally provided by a municipality are required
2 to be purchased from the military facility or a provider designated
3 by the military.

4 (3) The private contractor is not given the right and ability to
5 exercise any significant authority and control over the management
6 or operation of the military housing, separate and apart from the
7 rules and regulations of the military.

8 (4) The number of units, the number of bedrooms per unit, and
9 the unit mix are set by the military, and may not be changed by
10 the contractor without prior approval by the military.

11 (5) Tenants are designated by a military housing agency.

12 (6) Financing for the project is subject to the approval of the
13 military in its sole discretion.

14 (7) Rents charged to military personnel or their dependents are
15 set by the military.

16 (8) The military controls the distribution of revenues from the
17 project to the private contractor, and the private contractor is
18 allowed only a predetermined profit or fee for constructing the
19 military housing.

20 (9) Evictions from the housing units are subject to the military
21 justice system.

22 (10) The military prescribes rules and regulations governing
23 the use and occupancy of the property.

24 (11) The military has the authority to remove or bar persons
25 from the property.

26 (12) The military may impose access restrictions on the
27 contractor and its tenants.

28 (13) Any reduction or, if that amount is unknown, the private
29 contractor's reasonable estimate of savings, in property taxes on
30 leased property used for military housing under the Military
31 Housing Privatization Initiative (10 U.S.C. Sec. 2871 and et seq.)
32 shall inure solely to the benefit of the residents of the military
33 housing through any of the following improvements, and the
34 renovation and refurbishment of those improvements, provided
35 by the private contractor:

36 (A) (i) Community improvements, including, but not limited
37 to, child care centers and recreation centers.

38 (ii) Housing improvements, including, but not limited to, the
39 construction of additional housing units.

1 (B) (i) Except as provided in subparagraph (C), the private
2 contractor shall expend the reasonable estimate of property tax
3 savings for an assessment year through the construction of
4 community and housing improvements and the renovation and
5 refurbishment of those improvements each year or within the time
6 period the county assessor may make an escape assessment under
7 Section 532.

8 (ii) Any expenditure of property tax savings pursuant to this
9 subparagraph shall be in addition to any contractual obligation
10 incurred by the private contractor for the construction, renovation,
11 rehabilitation, replacement, management, or maintenance of the
12 military housing.

13 (C) (i) The private contractor may use the reasonable estimate
14 of property tax savings that will be realized over the term of the
15 lease of the housing project to construct, or to secure financing
16 for, the construction of community and housing improvements
17 and the renovation and refurbishment of those improvements as
18 specified in paragraph (1) as part of the initial construction of the
19 project.

20 (ii) If, before the expiration of the time period for the initial
21 construction of the project, the private contractor and the county
22 assessor agree, in writing, to extend the time period, the initial
23 construction time period shall be extended to the time period agreed
24 upon. The time period may also be extended by subsequent
25 agreements, in writing, made before the expiration of the time
26 period previously agreed upon.

27 (iii) The time period the county assessor may make an escape
28 assessment under Section 532 shall be extended by a time period
29 equal to the extension of the initial construction period agreed
30 upon by the county assessor and the private contractor pursuant
31 to clause (ii).

32 (iv) Any expenditure of property tax savings pursuant to this
33 subparagraph shall be in excess of the minimum improvements
34 required by the military in its request for proposals or equivalent
35 document, including any subsequent modifications and
36 amendments, for which the private contractor submitted a response
37 that was accepted by the military for the housing project.

38 (D) For purposes of this section, both of the following shall
39 apply:

1 (i) The estimate of assessed value that will determine the
2 property tax savings to be realized over the term of the lease of
3 the housing project shall be calculated by using an income approach
4 to value.

5 (ii) “Initial construction of the project” means construction
6 completed within the first four years of the term of the lease of the
7 housing project.

8 (14) The military family housing is constructed, renovated,
9 rehabilitated, remodeled, replaced, or managed under the Military
10 Housing Privatization Initiative, or any successor to that law.

11 (15) For purposes of this section, “military facility under military
12 control” means a military base that restricts public access to the
13 military base.

14 (b) For purposes of this section, both of the following shall
15 apply:

16 (1) The private contractor shall, at the request of county assessor,
17 provide all of the following:

18 (A) The request for proposals or equivalent document, including
19 any subsequent modifications or amendments.

20 (B) The response submitted by the private contractor and
21 accepted by the military for the housing project.

22 (C) Upon execution thereof, the lease and any other binding
23 project documents that identify the initial project scope.

24 (2) For housing projects where the lease was entered into on or
25 after January 1, 2008, and the private contractor would like to
26 expend the reasonable estimate of property tax savings as
27 authorized by paragraph (13), the private contractor’s response
28 that was accepted by the military and the binding project
29 documents, shall include all of the following:

30 (A) The private contractor’s reasonable estimate of property
31 tax savings over the term of the lease of the housing project.

32 (B) A detailed calculation of the private contractor’s estimate
33 of property tax savings.

34 (C) The community and housing improvements to be constructed
35 with the property tax savings.

36 (D) The projected scope of the housing project if the estimated
37 property tax savings were not available to be used to construct or
38 secure financing for the community or housing improvements.

1 (3) The county assessor shall not be bound by the information
2 provided by the private contractor pursuant to paragraphs (1) and
3 (2) and may conduct his or her own investigation.

4 (c) The amendments made to this section by the act adding this
5 subdivision shall apply to any housing project where the contract
6 or lease for the possession or use of land was entered into on or
7 after January 1, 2006.

8 ~~SEC. 2.— Subdivision (m) of Section 107.4 of the Revenue and
9 Taxation Code enacted by Section 1 of Chapter 853 of the Statutes
10 of 2004 and amended by this act shall be interpreted to prevent
11 the possession or use of land or improvements from escaping
12 assessment. Specifically, that if the tax savings for a given
13 assessment year are not expended through constructed
14 improvements within the time period that the county assessor may
15 make an escape assessment for that assessment year, the
16 requirement of subdivision (m) of Section 107.4 of the Revenue
17 and Taxation Code, as amended by this act, is not satisfied. Further,
18 in any hearing involving the appeal of an escape assessment made
19 by the county assessor for a failure to satisfy the requirements of
20 that subdivision (m) of Section 107.4, the county assessor shall
21 have rebutted the presumption affecting the burden of proof in
22 favor of the taxpayer or assessee under subdivision (a) of Section
23 167 of the Revenue and Taxation Code by submitting a statement
24 that, to the best of his or her knowledge, the requirements of
25 Section 107.4 have not been satisfied. Except as provided by this
26 section, the amendments made to Section 107.4 of the Revenue
27 and Taxation Code by this act shall not be construed as limiting
28 the ability of the county assessor and a taxpayer from extending
29 the period of time within which to make an escape assessment
30 under Section 532.1 of the Revenue and Taxation Code.~~