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Taxation. Real Property Valuation. Disasters, Seismic Safety, Change in Ownership

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Official Title and Summary Prepared by the Attorney General

TAXATION. REAL PROPERTY VALUATION. DISASTERS, SEISMIC SAFETY, CHANGE IN OWNERSHIP. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Amends Article XIII A, Section 2, to provide that in valuing real property: "newly constructed" shall not include reconstruction of comparable improvements after a disaster, as defined by Legislature, or reconstruction or improvement to comply with seismic safety laws; and "change in ownership" shall not include the acquisition of comparable real property as a replacement for property damaged or destroyed as a result of such a disaster or if the person acquiring the property was displaced by eminent domain proceedings, acquisition by a governmental agency, or inverse condemnation. Fiscal impact on state and local governments: Local—Unknown, but probably significant, loss of property tax revenues. Moderate increase in assessment costs. State—Unknown additional costs in aid to local school districts. Unknown increase in income tax revenues.

FINAL VOTE CAST BY THE LEGISLATURE ON ACA 3 (PROPOSITION 5)

Assembly—Ayes, 77
Noes, 0

Senate—Ayes, 38
Noes, 0

Analysis by the Legislative Analyst

Background:

Article XIII A was added to the California Constitution by Proposition 13 on June 6, 1978. That article provides that real property (land and buildings) shall be reappraised for property tax purposes only when purchased, newly constructed, or a "change in ownership" has occurred. Otherwise, the full cash value of the property may be increased for property tax purposes by not more than 2 percent per year.

Article XIII A also specifies that a building shall not be deemed to be "newly constructed" if it has been reconstructed after being damaged by a disaster, as declared by the *Governor*, provided that the value of the reconstructed property is comparable to the value of the property prior to the disaster. If, instead of reconstructing a damaged building, the property owner acquires a replacement property following a disaster, the replacement property *is* subject to reappraisal under the Constitution.

A number of federal, state, and local laws require owners to make improvements to property for seismic (earthquake) safety purposes under certain circumstances.

Finally, current law provides for the acquisition of property by governmental agencies through purchase or condemnation (eminent domain) and requires that the property owner be compensated if the owner's property is acquired through condemnation. Also, current law permits a property owner to sue the government for compensation if the owner believes that the property has been "taken" or damaged by governmental action. A successful suit of this nature results in a finding that is called "inverse condemnation."

Proposal:

This measure affects both the "new construction" and "change in ownership" provisions of Article XIII A.

With respect to new construction, the measure does two things:

(1) It provides that real property reconstructed after a disaster, as defined by the *Legislature*, shall not be deemed to be "newly constructed." Thus, in addition to property reconstructed after a disaster declared by the Governor, property reconstructed after a disaster, as defined by the Legislature, would not be considered new construction (and thus not subject to reappraisal), provided that the reconstructed property is comparable in value to the original property before it was damaged.

(2) It provides that real property that is reconstructed to comply with seismic safety laws shall not be deemed to be "newly constructed." Thus, reconstruction of property to comply with seismic safety laws would not, by itself, lead to a reappraisal of that property for property tax purposes. The Legislature could define "seismic safety" for the purposes of this provision.

With respect to change in ownership, this measure does two things:

(1) It provides that the acquisition of real property as a replacement for property damaged or destroyed by a disaster, as defined by the Legislature, would not be considered a change in ownership, provided that the replacement property is comparable.

(2) It provides that the acquisition of real property to replace property from which someone has been displaced as a result of eminent domain, purchase by a

government agency, or inverse condemnation would not be considered a change in ownership, provided that the replacement property is comparable. This modification of the change in ownership provisions of Article XIII A would apply to any property acquired after March 1, 1975. Thus, acquisition of any property after that date for these reasons may not result in reappraisal of the property, provided the replacement property is comparable.

"Comparable property," with respect to the change of ownership provision, is defined by the measure as property which is similar in size, utility, and function or which conforms to minimum federal or state regulations concerning the relocation of persons displaced by governmental actions.

Fiscal Effect:

This measure would result in an unknown, but proba-

bly significant, loss of property tax revenues to local governments. Also, county assessors and tax collectors would probably experience minor to moderate administrative costs to revise assessments of properties affected by this measure.

State expenditures and revenues would be affected by this amendment in two ways. First, the state would incur additional, but unknown, costs under the main program providing aid to local school districts. This is because, under existing law, the state would have to replace any local property tax revenues which are lost as a result of this measure. Second, state income tax revenues would increase by an unknown amount. This is because property tax payments are deductible from taxable income on state income tax returns, and a reduction in property tax payments tends to increase the amount of income subject to state taxes.

Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 3 (Statutes of 1980, Resolution Chapter 45) expressly amends the Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

**PROPOSED AMENDMENT TO
ARTICLE XIII A**

First—That subdivision (c) is added to Section 2 of Article XIII A, to read:

(c) For purposes of this section, the term "newly constructed" shall not include real property which is reconstructed after a disaster, as defined by the Legislature, where the fair market value of such real property, as reconstructed, is comparable to its fair market value prior to the disaster, nor shall it include real property which is reconstructed or improved to comply with applicable laws relative to seismic safety, as defined by the Legislature.

Second—That subdivision (d) is added to Section 2 of Article XIII A, to read:

(d) For purposes of this section, the term "change in

ownership" shall not include the acquisition of real property as a replacement for comparable property if: (1) the property replaced was damaged or destroyed as a result of a disaster, as defined by the Legislature; or (2) the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a governmental agency, or governmental action which has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to minimum federal or state regulations governing the relocation of persons displaced by governmental actions. The provisions of this paragraph shall be applied to any property acquired after March 1, 1975.

Third—That subdivision (e) is added to Section 2 of Article XIII A, to read:

(e) The provisions of this section apply only to exemptions from real property assessment and do not limit the existing authority of the Governor to declare disasters or to provide emergency services to any area pursuant to law.

Apply for Your Absentee Ballot Early

Argument in Favor of Proposition 5

Proposition 5 would prevent property tax increases when families or businesses are forced to relocate or reconstruct because of events over which they had no control.

Under the current provisions of the California Constitution, individuals and businesses forced to relocate property to make way for public projects or to reconstruct property to meet seismic safety laws are hit by a tax increase as their property is assessed at full current market value.

Proposition 5 would prevent the double penalty of a tax increase after a government-caused relocation or reconstruction. No longer would these events consti-

tute a "change of ownership" or "new construction" which triggers a higher assessment and more taxes.

Proposition 5 was passed unanimously by the Legislature as a means of ensuring greater tax equity in California. We urge your "Yes" vote on Proposition 5.

JOHN KNOX

*Democratic Member of the Assembly, 11th District
Speaker pro Tempore of the Assembly*

KIRK WEST

*Executive Vice President
California Taxpayers' Association*

PAUL PRIOLO

Republican Member of the Assembly, 38th District

Rebuttal to Argument in Favor of Proposition 5

Proponents are not telling voters the whole truth.

This measure is a proposal by the Legislature to amend Proposition 13, a constitutional limitation on property taxes approved by voters in 1978.

Proposition 5 would not merely exempt from a higher property assessment and more taxes those individuals and businesses forced to relocate "to make way for public projects." It would authorize the Legislature to exempt any individual, business or giant corporation that relocates because the previously owned property is even "damaged" by what the Legislature will later define as a "disaster."

Proposition 5 is likewise not restricted to exempting

property that is reconstructed "to meet seismic safety laws." It would authorize the Legislature to exempt any property that is reconstructed after what the Legislature will later define as a "disaster."

This measure goes too far. It would allow the Legislature to exempt from higher property taxes virtually any individual or business with an effective lobbyist in Sacramento. And when some persons pay less in taxes, government finds a way to make up the loss by **TAXING EVERYONE ELSE THAT MUCH MORE.**

GARY WESLEY

Attorney at Law

**To apply for an absentee ballot
contact your County Clerk or
Registrar of Voters early**

Argument Against Proposition 5

Proposition 13, approved by voters in 1978, has had the beneficial effect of curtailing the rapid rise in property taxes. However, even many supporters of Proposition 13 concede that it contains a serious flaw.

The problem is that Proposition 13 freezes property assessments at their 1975 level, but allows property to be reassessed when it is "*purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment.*"

As a result of this reassessment each time property changes hands, new owners face property taxes much higher than those imposed upon their neighbors who own property of equal value but have held that property for a longer period of time.

In addition, because industrial property is sold far less frequently than is residential property, this provision in Proposition 13 results in a gradual but massive shift of the property tax burden from industrial to residential owners and renters.

Rather than offering voters the opportunity to cor-

rect this flaw, the Legislature is proposing in this measure to retain the basic inequity, but exempt a small number of individuals from its unfair tax burden.

The individuals singled out for special treatment are those who relocate because of government action or because their property is "damaged" or destroyed by what the Legislature will later define as a "disaster."

This measure is both overinclusive and underinclusive. It goes too far in allowing the Legislature to define just which individuals ought to be able to purchase a new piece of property without facing a higher reassessment. On the other hand, the measure does not go far enough because it leaves intact the basic flaw in Proposition 13.

A "NO" vote will tell the Legislature that voters want the opportunity to correct Proposition 13 and that they do not want poorly written, piecemeal revisions written into our State Constitution.

GARY WESLEY
Attorney at Law

Rebuttal to Argument Against Proposition 5

The argument of the opponent misses the point.

The question raised by Proposition 5 is whether a taxpayer who is forced to move should have an increased assessment. Proposition 5 says, "No, that isn't fair."

JOHN KNOX
*Democratic Member of the Assembly, 11th District
Speaker pro Tempore of the Assembly*

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You must reregister whenever you move