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Taxation. Family Transfers.

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Official Title and Summary Prepared by the Attorney General

TAXATION. FAMILY TRANSFERS. LEGISLATIVE CONSTITUTIONAL AMENDMENT. State Constitution Article XIII A, enacted as Proposition 13 in 1978, with certain exceptions, places a limitation on real property taxes equal to 1 percent of its full cash value listed on the 1975-1976 tax bill. Property may be reassessed on "purchase" or other "change of ownership." This measure amends Article XIII A to provide the terms "purchase" and "change of ownership" do not include the purchase or transfer of (1) real property between spouses and (2) the principal residence and the first \$1,000,000 of other real property between parents and children. Summary of Legislative Analyst's estimate of state and local fiscal impact: Measure would reduce local property tax revenues. Cities, counties, and special districts would lose an estimated \$17 million in 1987-88, \$37 million in 1988-89, and increasing amounts in future years. Remaining losses would be to school and community college districts. Increased state aid from the State General Fund would offset these losses, resulting in an estimated loss to the General Fund of \$11 million in 1987-88, \$23 million in 1988-89, and increasing amounts in future years.

Final Vote Cast by the Legislature on ACA 2 (Proposition 58)

Assembly: Ayes 74
Noes 0

Senate: Ayes 34
Noes 0

Analysis by the Legislative Analyst

Background

Under the California Constitution, real property (such as land and buildings), is taxed on the basis of its assessed value. This value is the property's 1975-76 assessed value, or its market value when "purchased, newly constructed, or a change of ownership has occurred after the 1975 assessment." The assessed value may increase at a later date to reflect the value of improvements made by the owner. Otherwise, the assessed value may increase to reflect inflation, but by no more than 2 percent each year. Generally, the assessed value of real property is considerably less than its current market value.

The Legislature has passed statutes that define certain transfers of real property as not constituting a "change of ownership." As a result, in these cases, reassessment of the property to reflect its market value is prohibited. These include transfers between spouses, and transfers of eligible dwelling units between parents and children under *limited circumstances*. These include:

- transfers of a dwelling unit from a parent or legal guardian to a minor child, or between minor siblings, as a result of a court order related to the death of the parent;
- transfers of a dwelling unit from a parent or legal guardian to a disabled child following the death of the parent.

Proposal

This constitutional amendment would broaden the circumstances under which reassessment is not required in cases involving the transfer of real property between parents and children. In addition, the measure would place the existing statutory treatment of property transfers between spouses into the Constitution. Thus, the measure

prohibits the reassessment of property to reflect its market value under additional circumstances.

In the case of transfers between parents and their children, the measure applies to transfers of the principal residence, regardless of value, and to a limited amount of all other real property. This limit is the first \$1,000,000 of assessed value, regardless of the number of properties transferred. Property transferred after the \$1,000,000 assessed value ceiling is reached would be subject to reassessment. The measure provides for the Legislature to define its terms, and these definitions would affect the scope of the measure.

The measure would apply only to transfers of property between parents and children which occur after the measure becomes effective.

Fiscal Effect

The provisions preventing the reassessment of real property transferred between spouses, and between parents and their children under the limited circumstances provided for by existing law, would have no fiscal effect. This is because existing statutory law prevents reassessment in these cases.

The provisions which prevent reassessment of property transferred between parents and their children under circumstances not covered by existing law, however, would reduce local property tax revenues. The scope of the revenue losses would depend on actions taken by the Legislature in defining the terms used in the measure. If these terms were defined broadly, revenues would fall by an estimated \$28 million in 1987-88, \$60 million in 1988-89, and increasing amounts in subsequent years. Of these amounts, cities, counties and special districts would lose \$17 million in 1987-88, \$37 million in 1988-89, and increasing amounts in each subsequent year.

The remainder of the losses would affect school districts and community college districts. Under existing law, higher state aid would offset these losses. We estimate that the

State General Fund cost for the increased aid would amount to \$11 million in 1987-88, \$23 million in 1988-89, and increasing amounts in each subsequent year.

Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 2 (Statutes of 1986, Resolution Chapter 61) expressly amends the Constitution by adding provisions thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XIII A, SECTION 2

(g) For purposes of subdivision (a), the terms "purchased" and "change in ownership" shall not include the purchase or transfer of real property between spouses since March 1, 1975, including, but not limited to, all of the following:

(1) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor.

(2) Transfers to a spouse which take effect upon the death of a spouse.

(3) Transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

(4) The creation, transfer, or termination, solely between spouses, of any coowner's interest.

(5) The distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.

(h) For purposes of subdivision (a), the terms "purchased" and "change of ownership" shall not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children, as defined by the Legislature, and the purchase or transfer of the first \$1,000,000 of the full cash value of all other real property between parents and their children, as defined by the Legislature. This subdivision shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree.

(i) Unless specifically provided otherwise, amendments to this section shall be effective for change of ownerships which occur, and new construction which is completed, after the effective date of the amendment.

You're the ruler! Make the system measure up! Vote!

Richard Harris, Davis

Arguments in Favor of Proposition 58

It's time to fix another mistake made in Proposition 13.

Proposition 58 will *exempt* most transfers of property between parents and children from property tax reappraisals which are required by Proposition 13. The principal residence of the transferee and up to \$1 million of other property may be transferred without reappraisal.

The strength of our society rests in the family. This is a special relationship that is recognized in all other areas of the tax code.

Many parents have aided their children in obtaining their first homes. In doing so, title is often in the name of the parent. When title is transferred, there is a reappraisal under current law, even though the occupants of the property remain the same.

Proposition 58 would correct this problem and exempt such transactions from reappraisal. Inherited property passing from parents to children (or vice versa) would also be exempt, up to the limit provided in the bill.

Many family businesses and farms are jeopardized by reappraisals caused by the death of the parents. These reappraisals often increase property taxes so much that a viable business becomes uneconomic.

A yes vote on Proposition 58 will protect property transfers within the family.

THOMAS M. HANNIGAN
Member of the Assembly, 4th District

LEO T. MCCARTHY
Lieutenant Governor

In addition to the exemption from reappraisal of transfers between parents and their children, there is another very important feature of Proposition 58.

Proposition 58 makes sure that when property is transferred between husbands and wives, property taxes won't go up.

This protection against reappraisal of property transferred between spouses is currently in law.

There are two reasons to provide constitutional protection for transfers of property between spouses to prevent tax increases resulting from reappraisal:

(1) Some attorneys have argued that the statutory protection is unconstitutional.

(2) Constitutional protection is more secure as it can only be changed by another vote of the people.

Please vote yes on Proposition 58.

LUCY KILLEA
Member of the Assembly, 78th District

Rebuttal to Arguments in Favor of Proposition 58

Proponents contend it's unfair to reassess property and impose higher property taxes upon family members who have received homes and other real estate often FOR ABSOLUTELY NOTHING as a gift or through inheritance.

Fine. But what about the millions of Californians who must use *their own life savings* and *most of their own monthly income* to BUY a home in today's inflated real estate market?

Why should these first-time home buyers and families forced to move for economic reasons (such as job layoffs and transfers) be additionally burdened with property taxes 3-4 times higher than their residential neighbors and owners of commercial and industrial property purchased at lower prices years ago?

Why should renters face *rent increases* due, in part, to higher property taxes imposed on the landlord each time

property changes hands?

The Legislature and Governor should stop tinkering with Proposition 13 and offer voters a comprehensive amendment which eliminates all of these inequities.

Here are some possibilities:

(1) Equalize the assessed value of all property at the 1975 levels established for some owners under Proposition 13. Homes built since 1975, for example, would be taxed at a level reflective of the area's lower property values in 1975.

(2) Periodically reassess all property *but* provide for an automatic reduction in the tax *rate* so that government does not get more money just because overall property values go up.

GARY B. WESLEY
Attorney at Law

Argument Against Proposition 58

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

Under Proposition 13 (now Article XIII A of the California Constitution), assessed property values generally are frozen at their 1975 levels; however, property is reassessed and higher property taxes are imposed each time the property 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 are required to pay far more in property taxes than do their neighbors whose property has the same value but was purchased earlier when property values were lower.

In addition, this automatic reassessment provision has caused a gradual but massive shift of the overall property tax burden *from* owners of commercial and industrial property (which is often leased but seldom sold) *to* owners (and renters) of residential property.

Instead of offering voters an amendment to Proposition 13 which would correct these inequities, the Legislature proposes in this measure to retain the basic flaw but exempt a relatively small number of persons from the unfair tax burden the automatic reassessment provision places

upon new owners and renters of residential property.

Specifically, this measure provides that property "purchased" or otherwise transferred "between spouses since March 1, 1975," would not be subject to reassessment and higher property taxes. This measure also provides that property "purchased" or otherwise transferred "between parents and their children" ("after the effective date of the amendment" following this election) would not be subject to reassessment and higher property taxes.

Surely, it is unfair to reassess property which changes hands within a family—especially when a spouse or parent has died. However, it is even more unfair to require persons who must *pay* the sky-high current price for a home in California to suffer the additional penalty of paying sky-high property taxes imposed following reassessment.

A "no" vote on this measure may send a message to the Legislature (and Governor) that voters want to be offered a comprehensive amendment to Proposition 13 which would eliminate the unfairness to all new owners and renters created by the automatic reassessment provision.

For this reason, I respectfully recommend a "no" vote on this measure.

GARY B. WESLEY
Attorney at Law

Rebuttal to Argument Against Proposition 58

Mr. Wesley does not question the fairness of Proposition 58. What he is suggesting is that Proposition 58 be held hostage to some future unspecified reform of Proposition 13. This is not fair to California families who will pay higher taxes on property transferred between parents and children while they wait for Mr. Wesley to develop his plan

for a comprehensive reform of Proposition 13.

Tax relief provided by Proposition 58 is needed now. Please vote yes on Proposition 58.

THOMAS M. HANNIGAN
Member of the Assembly, 4th District

Your direct line to the Capitol—your vote.

Linda Bunch and Sally Burgan, San Diego