

RESOLUTION 08-03-05

DIGEST

Commercial and Industrial Property: Reassessment Required

Amends Article XIII-A, Section 2(a), of the California Constitution to require annual reassessment of business properties valued in excess of two million dollars.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to 7-09-04, which was disapproved.

Reasons:

This resolution amends Article XIII-A, Section 2(a), of the California Constitution to require annual reassessment of business properties valued in excess of two million dollars. This resolution should be approved in principle because it would increase the real property tax base and hence tax receipts for the state providing increased funds necessary for the maintenance of essential services to the public.

This resolution recommends that the Legislature submit a referendum to the voters of the State to amend some of the changes implemented by Proposition 13, passed by initiative in June 1978. That Proposition curtailed the pre-existing practice of reassessment of real properties annually, reflecting a "voter revolt" against the burden on taxpayers, particularly homeowners, suffering annual property tax increases.

This resolution proposes to reinstate annual reassessments on commercial and industrial properties valued in excess of two million dollars as of January 1, 2007, and also exempts from reassessment leased commercial and industrial properties which if valued separately would also be less than two million dollars as of January 1, 2007. The protection of homeowners and small businesses from annual increases would be unaffected. The consequence of the amendment, if passed by the voters, would be to close a major loophole by which companies avoid increased assessments of their properties and to raise needed tax revenues to sustain essential public services.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations urges the California Legislature to submit to the voters of California a referendum for an Amendment to Article XIII-A, Section 2 (a), of the Constitution of California, to read as follows:

1 § 2

2 (a) The "full cash value" means the county assessor's valuation of real property as shown on

3 the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when

4 purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment.

5 All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect

6 that valuation. Notwithstanding any other provision of law, all commercial and industrial property

7 with a value of two million dollars or more as of January 1, 2007, shall be reassessed annually,

8 provided that a partial exemption from such annual reassessment shall be recognized for leased

9 commercial or industrial property which, if assessed separately, would have had a value of less than

10 two million dollars as of January 1, 2007. For purposes of this section, "newly constructed" does not

11 include real property that is reconstructed after a disaster, as declared by the Governor, where the

12 fair market value of the real property, as reconstructed, is comparable to its fair market value prior to

13 the disaster. Also, the term "newly constructed" shall not include the portion of reconstruction or

14 improvement to a structure, constructed of unreinforced masonry bearing wall construction,

15 necessary to comply with any local ordinance relating to seismic safety during the first 15 years
16 following that reconstruction or improvement.

17 However, the Legislature may provide that under appropriate circumstances and pursuant to
18 definitions and procedures established by the Legislature, any person over the age of 55 years who
19 resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3
20 of Article XIII and any implementing legislation may transfer the base year value of the property
21 entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement
22 dwelling of equal or lesser value located within the same county and purchased or newly constructed
23 by that person as his or her principal residence within two years of the sale of the original property.
24 For purposes of this section, "any person over the age of 55 years" includes a married couple one
25 member of which is over the age of 55 years. For purposes of this section, "replacement dwelling"
26 means a building, structure, or other shelter constituting a place of abode, whether real property or
27 personal property, and any land on which it may be situated. For purposes of this section, a two-
28 dwelling unit shall be considered as two separate single-family dwellings. This paragraph shall apply
29 to any replacement dwelling that was purchased or newly constructed on or after November 5, 1986.

30 In addition, the Legislature may authorize each county board of supervisors, after
31 consultation with the local affected agencies within the county's boundaries, to adopt an ordinance
32 making the provisions of this subdivision relating to transfer of base year value also applicable to
33 situations in which the replacement dwellings are located in that county and the original properties
34 are located in another county within this State. For purposes of this paragraph, "local affected
35 agency" means any city, special district, school district, or community college district that receives an
36 annual property tax revenue allocation. This paragraph shall apply to any replacement dwelling that
37 was purchased or newly constructed on or after the date the county adopted the provisions of this
38 subdivision relating to transfer of base year value, but shall not apply to any replacement dwelling
39 that was purchased or newly constructed before November 9, 1988.

40 The Legislature may extend the provisions of this subdivision relating to the transfer of base
41 year values from original properties to replacement dwellings of homeowners over the age of 55
42 years to severely disabled homeowners, but only with respect to those replacement dwellings
43 purchased or newly constructed on or after the effective date of this paragraph.

44 [Sections (b) through (j) remain unchanged.]

(Proposed new language underlined; language to be deleted stricken.)

PROPOSER: National Lawyers Guild, San Francisco Chapter

STATEMENT OF REASONS

Existing Law: Existing law includes all real property in California under the protection of Proposition 13 (Cal. Const., Art. XIII-A, § 2), passed by the voters on June 6, 1978 which precludes annual reassessments of the value of all real property.

This Resolution: Requests the legislature to submit to the voters a referendum for a constitutional amendment to remove commercial and industrial properties with a value over \$2 million on 1/1/07 from continued protection against annual reassessment. In addition, businesses that leased property that had an assessed value of less than \$2 million, as of January 1, 2007, if assessed separately, would also be exempt from such annual reassessment.

The Problem: Proposition 13 prohibited annual reassessment of the value of real property in California and did not distinguish between property uses. This has resulted in a substantial reduction in property tax revenue for state and local governments in California over the past 26 years. This has been particularly evident during the past three years due to the economic recession caused by the collapse of the dot com phenomenon and other factors.

The consequences of this drastic reduction of tax revenue threatens to affect every type of government service provided by state and local governments and special districts in this state, including education, healthcare, public safety services, the judicial system, recreation services, environmental protection, child protection, transportation services, and every other governmental function.

This resolution suggests a modest but significant change in Proposition 13. It does not apply that change to real property used for residential purposes – either by homeowner or apartment owner – or to commercial or industrial property with a value of less than \$2 million as of 1/1/07. The purpose of these exemptions is to continue the protection of individuals, with respect to their homes or apartments, and small businesses.

Recent opinion surveys indicate that a majority of the residents of California favor this modification and would support it if given the opportunity to consider it as a constitutional amendment. This resolution asks that the Legislature approve a referendum allowing the voters of California an opportunity to make that choice.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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RESPONSIBLE FLOOR DELEGATE: Dennis S. Weaver

COUNTER ARGUMENTS

ORANGE COUNTY BAR ASSOCIATION

This Resolution revisits Resolution 07-09-04, which the delegation disapproved last year. The Resolution purports to have an annual reassessment of real property taxes on commercial or industrial properties with a value as of January 1, 2007 of in excess of \$2 million. The proposed resolution would necessarily visit a disproportionate tax burden on small and medium sized businesses in the State of California, who lease commercial and industrial property in this state. At a time when the state is competing with other states and the international community to retain and attract business, this resolution takes the State of California in the wrong direction. Once again, it should be disapproved.

SANTA CLARA COUNTY BAR ASSOCIATION

This resolution (i) unfairly targets a narrow segment of society, owners of commercial or industrial property of a certain minimum value who occupy rather than rent out the property, asking members of that segment to bear a much larger tax burden than other, often equally wealthy, property owners; and (ii) contains numerous drafting problems and ambiguities that would lead to expensive, time consuming litigation.

There is a rational basis for the graduated federal and state income tax: those who have greater resources pay more than those of lesser means. It is illogical and unfair, however, for the majority of society to decide to place a greater tax burden on people who occupy the property they own than on those who own property purely for investment when both groups may have an equal ability to pay. Furthermore, because the entire tax increase resulting from reassessment would be effective immediately rather than being phased in over a period of years, this resolution would unfairly result in very large tax increases for persons, many of them elderly, who have owned the same property for a number of years.

Among the drafting problems and ambiguities in this resolution are the following: (i) there is no definition of "commercial property"; (ii) there is no definition of "industrial property"; (iii) it is unclear whether the \$2,000,000 floor is based on assessed value under Proposition 13 or fair market value; and (iv) it is unclear how the "partial exemption" for certain leased property would be calculated.

The Santa Clara County Bar Association delegation urges a no vote on Resolution 08-03-05.