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Revenue and Taxation

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Revenue and Taxation; disaster relief—personal income tax and bank and corporate tax

Revenue and Taxation Code §§ 196.91, 196.92, 196.93 (new); §§ 17207, 24347.5 (amended).

SBX 2 (Thompson); 1995 STAT. Ch. 5X
(Effective June 15, 1995)

Under existing law, county boards of supervisors can enact ordinances permitting property owners to apply and receive a reassessment of their damaged or destroyed property after a disaster or calamity. Existing state law allows property owners living in counties which have enacted such ordinances to defer their next property tax payment until their property has been reassessed, and directs that the state shall temporarily allocate those revenues to the county until the deferment has ceased. Under Chapter 5X, the State provides funds to offset the reduction in property tax revenue caused by the storms of 1995 to those counties which have enacted such ordinances.

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2. See CAL. REV. & TAX. CODE § 170(a)(1) (West. Supp. 1995) (defining "damage" to include loss of property value due to restricted access caused by a disaster in a region deemed by the Governor to be in a state of disaster); id. § 170(a)(3) (West Supp. 1995) (referring to the suspension or restriction of the right to enter a possessory interest caused by a calamity or misfortune, including severe drought conditions as existed in California during 1976 and 1977).

3. Id. § 170 (West Supp. 1995); see id. § 170(a) (West Supp. 1995) (permitting the county board of supervisors to enact an ordinance that allows property owners to request and receive property reassessment due to unexpected disaster); id. § 170(a)(1)-(3) (West Supp. 1995) (restricting reassessment to regions declared by the Governor to be a state of disaster where the damage or destruction was caused by the same event, or to misfortune or calamity, including an event that restricts access to a possessory interest where that calamity could have been severe drought conditions such as were present in 1976 and 1977); id. § 170(d) (West Supp. 1995) (permitting the assessee to send a property owner an application for reassessment if an application has not been received within 60 months of the occurrence of damage); see also T.L. Enter., Inc. v. County of Los Angeles, 215 Cal. App. 3d 876, 880, 263 Cal. Rptr. 772, 774-75 (1989) (defining "calamity" or "disaster" as a sudden and unforeseeable event beyond control); 58 Op. Cal. Att’y Gen. 327, 329 (1975) (defining calamity as an adverse event out of the ordinary).

4. CAL. REV. & TAX. CODE § 194.1 (West Supp. 1995); see id. (granting deferral of secured roll property tax payments up to the end of the month after a reassessed bill is received in counties enacting reassessment ordinances pursuant to California Revenue and Taxation Code § 170); id. § 194.9 (West Supp. 1995) (granting a similar deferral for supplemental roll property tax payments). But see id. § 194.1(b) (West Supp. 1995) (authorizing the assessor to assess a delinquency penalty for the non-payment of the deferred taxes if the owner did not apply for a deferral in good faith).

5. Id. § 196.91 (enacted by Chapter 5X); see id. (requiring the county auditor to submit to the Director of Finance an estimate of the reduced property tax revenue due to reassessment of property caused by storms, flooding, or related casualty in 1995 in counties which were declared states of disaster); id. § 196.92 (enacted by Chapter 5X) (directing the Director of Finance to verify the estimate made pursuant to California Revenue and Taxation Code § 196.91 and certify the amount to the Controller within 30 days of verification, who will allocate the funds to the county within 10 days of receipt); see also id. § 196.93 (enacted by Chapter 5X) (indicating that the county will reimburse the state for any overestimate of the lost property tax revenues by
Also, existing federal law allows property value loss to be used as a deduction against federal income tax in the year the disaster occurred, or in the previous year for individual taxpayers, and carried forward for five years for corporate taxpayers. Chapter 5X allows property value losses attributable to the storms of 1995 to be carried forward for five years at one hundred percent. Any remaining

June 30, 1996, and the state will allocate more funds for any underestimate of the lost property tax revenues; cf. id. §§ 195.2, 195.3, 195.4 (West Supp. 1995) (allowing the State to allocate the lost property tax revenues from the Los Angeles floods in February of 1992, to certain counties); id. §§ 195.5, 195.6, 195.7 (West Supp. 1995) (allocating state funds equal to the lost property tax revenues from the Cape Mendocino earthquake in April of 1992, to certain counties); id. §§ 195.71, 195.72, 195.73 (West Supp. 1995) (permitting the State to allocate the lost property tax revenues from the Northridge earthquake in January of 1994, to certain counties); id. §§ 196.1, 196.5, 196.6 (West Supp. 1995) (allocating state funds equal to the lost property tax revenues from the Los Angeles riots in April and May of 1992, to certain counties); id. §§ 196.4(a), 196.4(b), 196.5, 196.6 (West 1995) (allocating state funds equal to the lost property tax revenues from the Berkeley/Oakland fire in October of 1991, and the Santa Barbara fires in June of 1990, to certain counties); id. §§ 196.61, 196.62, 196.65, 196.66, 196.67 (West Supp. 1995) (alloacting the State to allocate the lost property tax revenues from the storms and flooding in January of 1993, to certain counties); id. §§ 196.65, 196.66, 196.67 (West Supp. 1995) (allowing the State to allocate the lost property tax revenues from the Shasta and Calaveras counties fires in August of 1992, to certain counties); id. §§ 196.7, 196.8, 196.9 (West Supp. 1995) (allocating state funds equal to the lost property tax revenues from the Landers earthquakes in June and July of 1992, to certain counties); id. §§ 196.94, 196.95, 196.96 (West Supp. 1995) (permitting the State to allocate the lost property tax revenues from the fires in October and November of 1993, to certain counties); id. §§ 196.97, 196.98, 196.99 (West Supp. 1995) (allowing the State to allocate the lost property tax revenues from fires in August of 1994, to certain counties).

6. 26 U.S.C.A. §§ 165(a), (d)(1), 1212(a)(1)(B) (West Supp. 1995); see id. § 165(a). (West Supp. 1995) (allocating losses for losses not compensated by insurance or other means); id. § 165(h)(1), (2) (West Supp. 1995) (limiting the amount of a taxpayer's deduction to the extent a loss exceeds insurance coverage plus $100, as long as the aggregate of all losses then exceeds 10% of the adjusted gross income); id. § 165(i)(1) (West Supp. 1995) (allowing an election to use the deduction in the present year or the previous year if the President warrants that assistance be given under the Disaster Relief and Emergency Assistance Act due to events which caused the casualty); id. § 1212(a)(1)(B) (West Supp. 1995) (allowing corporate taxpayers to carry forward up to five years casualty loss deductions pursuant to 26 U.S.C.A. § 165).

7. CAL. REV. & TAX. CODE § 17207(a), (a)(16), (b), (d)(15) (amended by Chapter 5X); see id. (allowing losses which qualify under 26 U.S.C.A. § 165(i) and were the result of storms, flooding or other related catastrophes in 1995 in cities or counties declared to be in a state of disaster by the Governor to be carried forward 5 years at 100%); id. §§ 17207(g), 24347.5(g) (amended by Chapter 5X) (limiting the election to make a deduction to the year of loss); id. § 24347.5(a)(12), (b), (d)(11) amended by Chapter 5X) (allowing losses which qualify under 26 U.S.C.A. § 165(i) and were the result of storms, flooding, or other related catastrophes in 1995 in cities or counties declared to be in a state of disaster by the Governor, to be carried forward 5 years at 100% and an additional 10 years at 50% of the remaining deduction for corporate taxpayers); cf. id. §§ 17207(a), (b), 24347.5(a)(8), (b), (d)(4) (amended by Chapter 5X) (fires or other related catastrophes in 1985); id. §§ 17207(a), (b), (d)(1), 24347.5(a)(2), (b), (d)(1) (amended by Chapter 5X) (storms, flooding or other related catastrophes in 1986); id. §§ 17207(a), (b), (d)(2), 24347.5(a)(3), (b), (d)(2) (amended by Chapter 5X) (forest fires or other related catastrophes in 1987); id. §§ 17207(a)(4), (b), (d)(3), 24347.5(a)(4), (b), (d)(3) (amended by Chapter 5X) (earthquakes or other related catastrophes in 1987); id. §§ 17207(a)(5), (b), (d)(4), 24347.5(a)(5), (b), (d)(4) (amended by Chapter 5X) (earthquakes or other related catastrophes in 1989); id. §§ 17207(a)(6), (b), (d)(5), 24347.5(a)(6), (b), (d)(5) (amended by Chapter 5X) (fires or other related catastrophes in 1990); id. §§ 17207(a)(7), (b), (d)(6) (amended by Chapter 5X) (the Oakland/Berkeley fire or other related catastrophes in 1990); id. §§ 17207(a)(8), (b), (d)(7) (amended by Chapter 5X) (storm, flooding or other related catastrophes during February 1992); id. §§ 17207(a)(9), (b), (d)(8), 24347.5(a)(7), (b), (d)(6) (amended by Chapter 5X) (earthquakes or other related catastrophes in April, 1992 in Humboldt County); id. §§ 17207(a)(10), (b), (d)(9), 24347.5(a)(8), (b), (d)(7) (amended by Chapter 5X) (riots, arson or other related
Revenue and Taxation

deduction may then be carried forward an additional ten years at fifty percent of the remaining value.  

COMMENT

Chapter 5X is intended to provide financial relief to those who have suffered from the devastating effects of the 1995 storm season. Chapter 5X is identical to other relief granted in previous years for other natural disasters, such as the 1994 earthquake. The storms were the most expensive in the state's history, and the relief will be beneficial to the counties in this tight economic time. The fiscal effect is $500,000 to $1 million for the state allocation of lost property tax and $14 million for the additional tax carry forward provision.

June D. Coleman

Selected 1995 Legislation
Revenue and Taxation; Electronic Communication Withholding Pilot Project—personal income tax

Revenue and Taxation Code § 18670.5(new).
AB 1011 (Weggeland); 1995 STAT. Ch. 222

Existing law permits the Franchise Tax Board to notify certain entities, including depository institutions, to withhold personal property from a delinquent taxpayer and transmit it to the Franchise Tax Board. The Franchise Tax Board may also collect other types of debt in the same manner, including delinquent child support payments. The Franchise Tax Board may use personal service or first class mail to notify the entity. Any depository institution is required to transmit the property to the Franchise Tax Board within ten days of receiving such notice. Entities notified of the withholding mandate, which do not withhold the property, are liable to the extent of the property, though the liability for depository institutions is limited to the extent the account can be identified.

Chapter 222 creates a pilot program which allows notification to a depository institution of an order to withhold by electronic communications.

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1. See CAL. GOV'T CODE § 15700 (West 1992) (establishing the Franchise Tax Board within the Agricultural and Services Agency).
2. See CAL. REV. & TAX. CODE § 18670(a) (West 1994) (describing entities which the Franchise Tax Board may notify to include, among others, any employer, person, officer or department of the state, or depository institutions).
3. See id. (defining depository institutions pursuant to 12 U.S.C. § 461(b)(1)(A); see also 12 U.S.C.A. § 461(b)(1)(A) (West & Supp. 1995) (defining "depository institutions" to include any bank, mutual savings bank, savings bank, savings association, or credit union insured pursuant to the Federal Depository Insurance Act or eligible to be insured pursuant to that act, or any entity which subscribed for the stock of a federal home loan bank).
4. See CAL. REV. & TAX. CODE § 18402(c)(1) (West Supp. 1995) (indicating that "taxpayer" should be defined pursuant to California Revenue and Taxation Code § 17004 when relating to personal income tax); see also id. § 17004 (West 1994) (defining "taxpayer" to include individuals, trusts, fiduciaries, and estates).
5. Id. § 18670(a) (West 1994).
6. Id. § 10878(a), (b) (West Supp. 1995); see id. § 19271(a), (b), (g) (West Supp. 1995) (allowing the Franchise Tax Board to collect child support, spousal support, or family support in the manner prescribed by law for the collection of delinquent income tax); see also id. § 10878(a) (West Supp. 1995) (permitting the Franchise Tax Board to collect vehicle registration fees, transfer fees, license fees, and parking tickets by any means used to collect delinquent income taxes); id. § 19290(a), (b) (West Supp. 1995) (granting authority to the Franchise Tax Board to collect delinquent fees, wages, and penalties related to unsatisfied judgments for the Department of Industrial Relations for violations of the Labor Code).
7. Id. § 18670(a) (West 1994).
8. Id.
9. Id. § 18670(c) (West 1994).
10. Id. § 18670.5(a) (enacted by Chapter 222); see id. (permitting the Franchise Tax Board to serve notice of an order to withhold by magnetic media, electronic transmission or other electronic technology); id. § 18670.5(b) (enacted by Chapter 222) (noting that the depository institution will be liable for amounts that are not withheld if the institution can identify the account by magnetic media, electronic transmission, or other electronic technology); id. § 18670.5(c) (enacted by Chapter 222) (noting that the institution's address where the notice can be sent includes the telephone or modem number, facsimile number, or any other number designated by the institution to receive data by electronic means); cf. OKLA. STAT. ANN. tit. 68, § 2369(D)(1) (West 1992) (requiring the Oklahoma Franchise Tax Board to mail a release of an order to withhold production
also mandates creation of a pilot program to track the results of this new notification process. Participation in the pilot program is permissive and limited to two years. The Franchise Tax Board is required to report to the Legislature regarding the program’s success, looking at a variety of factors. Factors which would indicate success include examining preparation and service time, preparation and service administrative costs, and the time or cost of receiving and processing electronic notice.

**COMMENT**

Electronic communication is increasing in today’s world. Chapter 222 is supported by the Franchise Tax Board as an effective means of cutting costs involved with first class mail and increasing revenues by expediting collections.

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11. 1995 Cal. Legis. Serv. ch. 222, sec. 2(a)-(c), at 657 (enacting CAL. REV. & TAX. CODE § 18670.5); see id. sec. 2(a), at 657 (mandating that the Franchise Tax Board establish a pilot program for electronic transmission of a notice of order to withhold to depository institutions).

12. Id. sec. 2(n), at 657; see id. (indicating that the program shall apply to electronically communicated notices pursuant to California Revenue and Taxation Code § 18670.5 from January 1, 1996 to January 1, 1998); id., sec. 2(c), at 657 (directing the Franchise Tax Board to use the program with depository institutions that agree to be a part of the program while suggesting that two of the depository institutions have assets of more than $500 million).

13. Id. sec. 2(o), at 658; see id. (describing the information to be included in the report to the Legislature, including a cost comparison between the two methods of service and the administrative advantages and disadvantages of both).

14. Id. sec. 2(d), at 657-58; see id. sec. 2(d)(1) (indicating that the program will be considered a success if the Franchise Tax Board can show that the time to prepare and serve notice of order to withhold can be reduced by at least two days using electronic transmissions); id. sec. 2(d)(2), at 657 (suggesting that the program will be considered a success if the Franchise Tax Board can show that the administrative cost to prepare and serve notice of order to withhold is less using electronic transmissions); id. sec. 2(d)(3), at 657-58 (asserting that the program will be considered a success if the Franchise Tax Board can show that the time and administrative cost to receive and process a notice of order to withhold is not increased by using electronic transmissions).


16. *Senate Committee on Revenue and Taxation, Committee Analysis of AB 1011*, at 1, 2 (June 21, 1995); see id. (stating that the Franchise Tax Board anticipates more efficiency in issuing orders to withhold and a reduction in the length of the process); *Assembly Committee on Appropriations*, *Selected 1995 Legislation*, 1003.
Chapter 222 is also intended to cut costs at depository institutions. It is estimated that the initial minor set-up costs will be offset by these savings and revenues. However, electronic transmission programs need to address concerns raised by electronic media communications, including those regarding confidentiality, data storage, errors or omissions in transmissions, acknowledgment of message receipt, authentication, and ease of data manipulation.

Committee Analysis of AB 1011, at 1, 2 (May 3, 1995) (indicating that increased revenues are expected from expediting delinquent payments); Assembly Committee on Revenue and Taxation, Committee Analysis of AB 1011, at 2 (Apr. 17, 1995) (noting the savings generated by moving from mail service to electronic service); Telephone Interview with Rob Cook, Legislative Consultant to Assemblymember Weggeland on AB 1011 (June 28, 1995) (notes on file with the Pacific Law Journal) (explaining that the current paper notification process is cumbersome for both the Franchise Tax Board and the depository institutions). See generally Jessica Copen, Courts of the Future, 77 A.B.A. J. 74, 76 (June, 1991) (stating that electronic filing is used to file federal applications for nuclear reactors and court filings in rural Kitsap County, Washington, with expectations of savings); DiPaolo, supra note 15, at 143 (suggesting that the commercial sector recognizes immediate benefits when using electronic communication, including avoidance of delays, shortening of payment cycles, reduction of clerical costs, and increases in accuracy); Judith Y. Gliniecki & Jeffrey B. Ritter, Electronic Communications and Legal Change: International Electronic Commerce and Administrative Law: The Need for Harmonized National Reforms, 6 Harv. J. L. & Tech. 263, 263 (1993) (suggesting that electronic communication in commercial settings increases speed and reduces communication costs); Richard B. Kelly, The CMI Charts a Course on the Sea of Electronic Data Interchange: Rules For Electronic Bills of Lading, 16 Mar. L. 349, 349, 350 n.2, 353 (noting that electronic data interchange is economical and efficient because it speeds up communication, ensures accuracy, and decreases costs to both sending and receiving parties); Daniel B. Kennedy, The Future of Filing: In Delaware Experiment, A Modern Replaces Trip to the Courthouse, 77 A.B.A. J. 32, 32 (July, 1994) (suggesting that the new electronic filing process in Delaware will provide savings to both the government and attorneys).

17. Senate Committee on Revenue and Taxation, Committee Analysis of AB 1011, at 2 (June 21, 1995); see id. (citing the Franchise Tax Board's belief that depository institutions will have reduced costs due to electronic service); Telephone Interview with Rob Cook, supra note 16 (suggesting that the current paper notification process is cumbersome for both the Franchise Tax Board and the depository institutions); see also Telephone Interview with Gloria McConnell, Legislative Analyst for the Franchise Tax Board (June 28, 1995) (notes on file with the Pacific Law Journal) (indicating that there are major depository institutions interested in participating in the program due to an anticipated reduction in costs).

18. Senate Committee on Revenue and Taxation, Committee Analysis of AB 1011, at 1 (June 21, 1995).

19. Boss, supra note 15, at 42; see id. (noting that the private sector must address concerns surrounding confidentiality as it relates to electronic communications); id. at 46-48 (suggesting that electronic communication raises concerns regarding the uncertainty of message receipt); id. at 50-52 (proposing data logs as a solution to electronic communication problems concerning data storage and audit trails); id. at 52-53 (discussing problems concerning authenticating electronic communications); id. at 55 (stating that confidentiality, authentication, and non-repudiation are required of electronic communications with respect to paper transmissions); id. at 56-57 (noting concerns regarding safeguarding data in electronic communications); id. at 61-62 (discussing issues surrounding errors or omissions in electronic communications); Kelly, supra note 16, at 356-57 (arguing that issues regarding message authenticity, integrity, and system breakdown, must be resolved); Salvatore Salamone, Legal Advice for E DI Users, Network World, Apr. 1, 1991, at 37 (indicating that questions need resolving regarding the storage of data, liability for error, integrity of communication and alteration of data transmitted); John Robinson Thomas, Legal Responses to Commercial Transactions Employing Novel Communications Media, 90 Micr. L. Rev. 1145, 1161-65 (1992) (outlining various problems encountered with electronic communications, including authentication, storage and error liability); Robert J. Webber, The Privacy of Electronic Communications: A First Step in the Right Direction, 1 J. L. & Tech. 115, 119 (1986) (questioning whether privacy issues related to electronic communications have been properly addressed by the legal community); Wilkerson, supra note 15, at 419-20 (arguing that alteration, forgery and security issues are present in electronic communications); Wright, supra note 15, at 31 (raising issues regarding the ease of data manipulation and security); George A. Zaphirliou, Unification and Harmonization of Law Relating to Global and Regional Trading, 14 N. Ill. U. L. Rev. 407, 414 (1994) (noting the problems with message authentication
These concerns are currently being addressed in the marketplace, though, and should not be insurmountable.20

June D. Coleman

Revenue and Taxation; property tax revenue shift calculations for counties that provide fire protection services and San Luis Obispo County

Revenue and Taxation Code §§ 97.313, 97.44 (new).
SB 124 (Leslie); 1995 STAT. Ch. 501
(Effective October 3, 1995)

Existing law shifts a portion of the property taxes1 collected by county assessors from county general funds to each county’s Educational Revenue Augmentation Fund.2 This fund allocates each county’s revenue portion to that county’s school districts, offices of education, and community colleges.3 While county assessors assess property within a county, the State Board of Equalization4 assesses multi-county pipelines, flumes, canals and ditches, as well as property owned or used by regulated railway, telephone, gas and electric companies.5

20. Boss, supra note 15, at 69-70; see id. (explaining that the commercial sector has addressed concerns surrounding electronic communications in a variety of ways); Kelly, supra note 16, at 356-66 (suggesting solutions to issues regarding message authority, integrity, and system breakdown); Salamone, supra note 19, at 37 (indicating a viable solution to questions surrounding electronic data interchange, including third party transmissions and validations, passwords, and internal controls); Wilkerson, supra note 15, at 424-26 (noting that security measures are available, such as secret codes, encryption algorithms, and third party transmission services); Wright, supra note 15, at 31 (answering issues raised regarding electronic communication, including discreet authentication codes, certification of electronic records, and security measures to prevent abuse).

1. See CAL. CONST. art. XIII, § 1 (granting authority to tax all property); CAL. REV. & TAX. CODE § 201 (West Supp. 1995) (noting that all property shall be taxed pursuant to the California Constitution).
3. Id. §§ 97.2(d)(2)-(4), 97.3(d)(2)-(3) (West Supp. 1995).
4. See CAL. CONST. art. XIII, § 18 (stating that the State Board of Equalization will be responsible for equalizing the county tax rolls); CAL. GOV’T CODE § 15600 (West Supp. 1995) (describing powers and duties of the State Board of Equalization, which includes creating rules and regulations for local boards of equalization and formulating instructions for assessors).
5. CAL. CONST. art. XIII, § 19; see id. (empowering the State Board of Equalization to tax property that lies in more than one county or that is owned or used by regulated railways or public utilities pursuant to local taxation laws); Southern Pacific Pipe Lines, Inc. v. State Bd. of Equalization, 14 Cal. App. 4th 42, 54, 17 Cal. Rptr. 345, 352 (1993) (holding that inter-county pipeline taxation by the State Board of Equalization will be limited to private inter-county pipelines and their fixtures, not to include real property, which meet the
The revenue reduction formula excludes special district property tax assessments where the district provides fire protection services,\(^6\) $100,000 of Madera County fire protection revenues and $200,000 of Tulare County fire protection revenues, and allows an exclusion of property tax assessments for small counties that provide fire protection services limited to a total of $2,000,000 statewide.\(^7\)

Chapter 501 permits eligible counties\(^8\) to retain the excess above the inclusive $2,000,000 cap, not to exceed $1,550,000.\(^9\) Chapter 501 directs the Director of Finance\(^10\) to notify qualifying counties of their eligibility.\(^11\) These additional funds are restricted to funding public safety services.\(^12\)

Since the Educational Revenue Augmentation Fund grants monies to the community colleges after offices of education and school districts are funded, Chapter 501 appropriates $243,620 from the General Fund for the Department of Finance to reimburse community college districts within participating counties that qualify for this reduction for lost funding.\(^13\)
Additionally, Chapter 501 permits San Luis Obispo County to calculate the property tax revenue shift based on ad valorem taxation assessed by the State Board of Equalization which is attributable to the County of San Luis Obispo. This recalculation of the property tax revenue shift of the 1993-94 fiscal year, which adjusts property tax allocations in subsequent years.

**COMMENT**

Chapter 501 will allow smaller counties equal treatment with respect to the reduction of property tax revenues. Counties using special districts to provide fire protection services do not have a $2,000,000 cap. Chapter 501 grants this exemption to the property tax shift for educational funding because the Legislature recognizes the importance of public safety services and the difficulty of providing those services as funding continues to diminish.

Butte and Siskiyou Counties are the only counties which are limited by the $2,000,000 cap. Fire protection services for these counties are costly. Primarily, Chapter 501 allows Butte County to exclude $1,500,000 from the property tax shift, while allowing Siskiyou County to exclude a minor amount.

The change in the method of calculating the property tax revenue shift for San Luis Obispo County is prompted by the county’s two unique characteristics. San Luis Obispo has an unusually high percentage of property assessed by the

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14. CAL. REV. & TAX. CODE § 97.44(a) (enacted by Chapter 501).
15. Id.
17. Id. at 1-2; see CAL. REV. & TAX. CODE § 97.3(c)(4), (5) (West Supp. 1995) (providing an exclusion of special district property tax assessments from the revenue reduction formula for districts which provide fire protection services).
18. 1995 Cal. Legis. Serv. ch. 501, sec. 3, at 3069 (enacting CAL. REV. & TAX. CODE § 97.313); id. sec. 8, at 3070; see CAL. CONST. art. XIII, § 35(a)(1) (specifying that public safety services impact economic activity and personal prosperity and security); 1993 Cal. Stat. ch. 73, sec. 1(c), at 2 (enacting CAL. GOV’T CODE §§ 30051, 30052, 30053, 30054; enacting CAL. REV. & TAX. CODE §§ 6376.2, 7251.4, 7285.3; amending CAL. REV. & TAX. CODE §§ 7102, 7285; and enacting and repealing CAL. REV. & TAX. CODE §§ 6201.6, 7285.4) (indicating that public safety services have an effect on economic activity and personal prosperity and well being); see also Holly A. Strom, Budget Cuts and the Poor, L.A. TIMES, July 13, 1994, at B6 (noting the state cut funding to the counties to resolve 61% of the budget deficit in 1993 and 85% of the deficit in 1994).
19. See CAL. REV. & TAX. CODE § 97.31(a), (b)(4), (5) (West Supp. 1995) (limiting the exclusion to $2 million statewide and authorizing the Director of Finance to prorate the exclusion); SENATE COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 124, at 1 (Mar. 20, 1995) (indicating that Butte and Siskiyou Counties' proportionate share of exclusion totaled $2 million).
20. Tom Philp, Wildfires Burning Up Resources; Government Spends Enormous Amounts Without Restraint to Battle Forest Blazes, Audit Finds, S.F. EXAMINER, Dec. 4, 1994, at C1; see id. (noting that fighting fires is costly, as indicated by the $12 million cost of the 1994 Barkley Fire in Butte and Tehema Counties, but also noting that fire fighting could be done more efficiently).
21. See SENATE FLOOR, COMMITTEE ANALYSIS OF SB 124, at 2 (May 31, 1995) (indicating that Siskiyou County's proportionate share of excess totaled $3254 and that Butte County's proportionate share of excess totaled $1.5 million).
22. ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT, COMMITTEE ANALYSIS OF SB 652, at 2 (July 5, 1995). SB 652 was incorporated into SB 124 during a conference committee. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 124, at 2 (Sept. 15, 1995).
State Board of Equalization and that property revenue is declining at an unusually high rate. Thus, San Luis Obispo has been doubly impacted as a major revenue source declined and other sources which are not declining have been appropriated for educational uses. Chapter 501 will adjust this inequity, resulting in a projected overall growth, albeit at a slower rate in the Educational Revenue Augmentation Fund.

These two provisions create an educational funding loss of $1.7 million, which is mitigated by appropriating limited funds for community colleges within the participating counties.

June D. Coleman
Revenue and Taxation; property taxation—entrepreneurial profit

Revenue and Taxation Code § 401.6 (new).
AB 315 (McDonald); 1995 STAT. Ch. 399

Existing law mandates that all property subject to general property taxation be assessed by the tax assessor at its full value. Chapter 399 prohibits estimated entrepreneurial profit from being added to the value of special use property.

1. CAL-REV. & TAX. CODE § 401 (West 1987); see Michael Todd Co. v. County of Los Angeles, 57 Cal. 2d 684, 697, 371 P.2d 340, 348, 21 Cal. Rptr. 604, 612 (1962) (stating that, in proper circumstances, the assessor may substitute cost for full cash value as the standard of valuation); cf. IND. CODE ANN. § 6-1.1-2-2 (West 1989) (stating that a just valuation basis shall be applied in a uniform and equal manner to all tangible property that is subject to assessment); N.M. STAT. ANN. § 7-36-15 (Michie 1993) (mandating that, for the purposes of property taxation, the value of any given property shall be its market value calculated by income generated by sales of comparable property); id. (stating that if market value cannot be fairly assessed, either the cost method of valuation or the income method of valuation shall be employed). See generally John P. Ludington, Annotation, Requirement of Full-Value Real Property Taxation Assessments, 42 A.L.R. 4TH 676, 676-722 (1985) (examining state and federal cases that deal with the issue of whether real property must be assessed at full value rather than fractional value for taxation purposes).

2. See CAL-REV. & TAX. CODE § 401.6(b)(1) (enacted by Chapter 399) (defining “entrepreneurial profit” as either the amount a developer would expect to recover from a certain parcel of property after subtracting costs, or the difference between the fair market value of a property and the total costs incurred with respect to that property); id. § 401(b)(2) (West 1987) (defining “total costs” as both direct and indirect costs of construction, thereby encompassing not only labor and materials, but also costs of construction capital and permit fees); Thomas R. Gould, Jr., Entrepreneurial Profit Incentive and Marketwide External Obsolescence: Are They Mutually Exclusive?, APPRAISAL J., Jan. 1995, at 53 (setting forth various definitions of entrepreneurial profit); Greg Lucas, Assembly OK’s Bill to Trim Arco Taxes but Few Lawmakers Aware of Effect on Firm, S.F. CHRON., May 19, 1995, at A23 (defining “entrepreneurial profit” as the computation of the amount of income that could potentially be earned by a commercial property); see also California Portland Cement Co. v. State Bd. of Equalization, 67 Cal. 2d 578, 584, 432 P.2d 700, 705, 63 Cal. Rptr. 5, 9 (1967) (declaring that when earnings of a particular business are taken into account for property tax purposes, the net earnings to be considered are those that would be anticipated by a prospective purchaser rather than the profitableness of the property to its present owner); Roehm v. Orange County, 32 Cal. 2d 280, 285, 196 P.2d 550, 554 (1948) (stating that intangible values that cannot be taxed as property may be reflected in the assessment of taxable property). See generally THE APPRAISAL OF REAL ESTATE, 454-55 (8th ed. 1983) (setting forth an explanation of entrepreneurial profit and emphasizing its importance to the cost approach).

3. See CAL-REV. & TAX. CODE § 401.6(b)(3) (enacted by Chapter 399) (defining “special use property” as property whose market value is limited due to a unique design that restricts its use); see also Guild Wineries & Distilleries v. County of Fresno, 51 Cal. App. 3d 182, 187, 124 Cal. Rptr. 96, 99 (1975) (stating that when a particular type of property is seldom exchanged, it has no market value; therefore, its taxable value must be assessed through the use of other appraisal methods); cf. Janss Corp. v. Bd. of Equalization of Blaine County, 478 P.2d 878, 880 (Idaho 1970) (declaring that because an accurate market value cannot be established for unique property, valuation must be based on other considerations). See generally Kristine Cordier Kamezis, Annotation, Sale Price of Real Property as Evidence in Determining Value for Tax Assessment, 89 A.L.R. 3d 1126, 1146-47 (1979) (setting forth a list of cases holding that the unique nature of certain property adversely affected the use of sale price as an indicator of the property’s value for assessment purposes).

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unless the assessor has market-derived evidence that entrepreneurial profit exists. Moreover, Chapter 399 protects property owners by providing that any entrepreneurial profit that does exist must be offset by physical deterioration or economic obsolescence.

COMMENT

Chapter 399 was enacted in response to equity concerns deriving from the difficulty in accurately calculating entrepreneurial profit. According to guidelines established by the Board of Equalization, entrepreneurial profit must be a market-derived figure. Consequently, problems arose when assessor’s were forced to calculate the entrepreneurial profit garnered from special use properties that were not placed on the market and for which there was no comparable sales data. In response to the difficulties in assessing entrepreneurial profit, different counties developed different rules governing its application. Of particular concern was the

4. CAL. REV. & TAX. CODE § 401.6(a) (enacted by Chapter 399); see id. (stating that § 401.6 of the California Revenue and Taxation Code applies when the cost-approach method for deriving property value is employed); see also ASSEMBLY COMMITTEE ON REVENUE AND TAXATION, COMMITTEE ANALYSIS OF AB 315, at 1 (Apr. 24, 1995) (stating that the cost-approach method is based upon the premise that an individual will not pay more for real property if he or she can obtain the same or similar goods at a lower price elsewhere); Ira C. Wolpert, How to Get the Value Out of a Real-Estate Appraisal: In Picking an Appraiser, Turn to Experience, Not Slick Packaging, LEGAL TIMES, Nov. 14, 1994, at S38 (defining the “cost-approach method” of valuation as one in which the appraiser estimates the cost to complete a particular project and examines the profit that the entrepreneur expects to make from the development).

5. CAL. REV & TAX. CODE § 401.6(a) (enacted by Chapter 359); see Bonnie H. Keen, Tax Assessment of Contaminated Property: Tax Breaks for Polluters?, 19 B.C. ENVTL. AFF. L. REV. 885, 890 n.39 (1992) (describing “functional obsolescence” as a condition which is brought about by an inherent flaw in the development, such as a poor floor plan or inadequate mechanical equipment); id. (stating that “economic” or “external obsolescence” is caused by conditions outside of the property, such as national economic conditions); Gould, supra note 2 (citing JEFFREY D. FISHER ET AL., THE LANGUAGE OF REAL ESTATE APPRAISAL (Dearborn Financial Publishing, Inc., 1991) and defining “economic obsolescence” as an occurrence that has a detrimental impact on the employment, quality of life, or economics of an area); see also LOS ANGELES COUNTY ASSESSMENT PRACTICES SURVEY, CAL. ST. BD. OF EQUALIZATION, at 14 (1992) (stating that there may be no entrepreneurial profit, but rather entrepreneurial loss, if a newly constructed property suffers from economic or functional obsolescence).

6. See ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 315, at 3 (May 11, 1995) (stating that entrepreneurial profit is not used statewide or, when it is used, is not applied uniformly); see Lucas, supra note 2 (stating that AB 315 was introduced to address the inconsistency by which county tax assessor’s assess property).


8. See id. (stating that the existence of entrepreneurial profit on special use properties is uncertain and, if found, is extremely hard to calculate).

9. See id. at 3 (noting that the disparity among counties with respect to the application of entrepreneurial profit has forced some California businesses to pay increased property taxes, while similar businesses, located in another part of the state, may escape the application of entrepreneurial profit); see also LOS ANGELES COUNTY ASSESSMENT PRACTICES SURVEY, supra note 5 (stating that at one time in Los Angeles County, 10% of the total of direct and indirect costs was set as the default amount of entrepreneurial profit to be applied in the cost approach); id. (describing the more restrictive approach employed by Los Angeles County in mid 1989, by which entrepreneurial profit could only be included in the cost approach, if it could be demonstrated from sales of similar properties); Letter from Bettina Redway, General Counsel, California Manufacturers Association, to Assemblymember Juanita McDonald (Apr. 18, 1995) (copy on file with the
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fact that counties applied entrepreneurial profit to all kinds of specialty properties, rather than limiting its application to investment properties. Accordingly, the provisions of Chapter 399 are tailored to provide clear guidelines governing the application of entrepreneurial profit.

Opponents of Chapter 399 contend that by eliminating entrepreneurial profit from special use property valuation, the county assessor will be unable to arrive at full market value for real property. Furthermore, detractors argue that Chapter 399 unduly burdens county assessors since entrepreneurial profit does exist in most cases.

Laura K. O'Connor

Revenue and Taxation; property taxation—economic revitalization manufacturing property

Revenue and Taxation Code § 5108 (amended).
SB 923 (Mello); 1995 STAT. Ch. 204

Existing law requires that all property be taxable at the same percentage of fair market value, except where an exemption conforms to the California Constitution. Existing law extends authority to local governing agencies to

Pacific Law Journal (noting that the lack of statutory definitions of entrepreneurial profit has led different counties to develop different variations of entrepreneurial profit).

10. See Assembly Committee on Revenue and Taxation, Committee Analysis of AB 315, at 3 (Apr. 24, 1995) (stating that AB 315 was centered around the application of entrepreneurial profit to the energy created by the co-generation plant owned by Atlantic Richfield Company (ARCO)); see also Lucas, supra note 2 (relating ARCO's contention that entrepreneurial profit should not be applied to the energy created by the co-generation facility because that etergy is not sold to anyone); Letter from Bettina Redway, supra note 9 (expressing the concern of the California Manufacturers Association that entrepreneurial profit was being applied to specialty properties, including manufacturing sites).


12. See Assembly Committee on Revenue and Taxation, Committee Analysis of AB 315, at 5 (Apr. 24, 1995) (suggesting that AB 315 may violate the California Constitution if it is found that property is being assessed at less than the full market value); see also Letter from Daniel J. Wall, Deputy Director for Revenue and Taxation and Federal Affairs, to Assemblymember Juanita McDonald (Mar. 14, 1995) (copy on file with the Pacific Law Journal) (contending that the elimination of entrepreneurial profit from the valuation process inhibits the assessor from determining full market value for real property, thereby constituting a partial exemption on real property, which is unconstitutional under the California Constitution).

13. See Letter from Daniel J. Wall, supra note 12 (noting that AB 315 greatly increases the workload of the county assessor by constantly forcing the county assessor to prove that entrepreneurial profit exists).

1. Cal. Const. art. XIII, § 1; see id. (requiring that all property be taxed at the same percentage according to fair market value and that the same percentage must be utilized to determine fair market value); cf. S.C. Const. art. III, § 29 (requiring that the taxes for all property will be assessed on the actual value of the property).

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discount the property taxes received from economic revitalization manufacturing property.²

Chapter 204 broadens the definition of a local agency to include redevelopment agencies.³ Furthermore, Chapter 204 allows a local agency to contract with taxpayers to implement the rebate provisions.⁴

COMMENT

Chapter 204 was enacted to provide redevelopment agencies another method to encourage economic growth in a particular location.⁵ However, in implementing tax breaks, certain procedures should be followed to encourage industries to remain and expand in a particular location.⁶ Nevertheless, the Legislature, in allowing redevelopment agencies to grant tax rebates, is responding to the larger problem of a declining economic base.⁷

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². CAL. REV. & TAX. CODE § 5108(a) (amended by Chapter 204); see id. (providing that the governing body of local agencies, such as cities and counties, can give a rebate to property tax revenue generated from the taxation of manufacturing equipment); id. § 5108(b)(1)(A), (B) (defining “economic revitalization manufacturing property” as tangible personal property that is involved in the manufacturing process, that will lead to the creation of at least 10 new manufacturing jobs with salary levels of $10 or more per hour and the local agency finds that the property is used with the established of expansion of a manufacturing project); see also Dain Mfg. Co. v. Iowa State Tax Comm’n, 22 N.W.2d 786, 790-91 (Iowa 1946) (holding that industrial equipment can be included in the manufacturing exemption even though the article might not be used entirely for a manufacturing purpose); Schulte Oil Co. v. Oklahoma Tax Comm’n, 882 P.2d 65, 72-73 (Okla. 1994) (concluding that manufacturing includes both the production of new and raw materials and the remanufacturing of used and commercially worthless material into a valuable commodity).

³. CAL. REV. & TAX. CODE § 5108(b)(5) (amended by Chapter 204).

⁴. Id. § 5108(f) (amended by Chapter 204); see also Welch v. Cook, 97 U.S. 541, 542 (1878) (upholding a statute which allowed manufacturing equipment to be taxed at a different rate than other property for 10 years as a valid exercise of the Legislature’s authority); Associated Indus. of Mass. v. Comm’r of Revenue, 393 N.E.2d 812, 816 (Mass. 1979) (stating that even though the same manufacturing property bears a larger tax levy in one municipality than another due to certain certifications, the discrepancy was not illegal, nor invalid); Holzwasser v. Brady, 205 S.E.2d 701, 704 (S.C. 1974) (holding the Legislature has the power to classify property differently for taxation purposes if there is a reasonable underlying rationale); cf. OKLA. STAT. ANN. tit. 68, § 1404(d) (West 1992) (allowing an exemption of taxes to machinery and equipment incorporated into manufacturing processes and operations); WIS. STAT. ANN. § 70.995(4) (West Supp. 1994) (permitting the Department of Revenue to assess manufacturing property differently than real property).

⁵. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 923, at 3 (Apr. 6, 1995); see id (noting that the purpose of redevelopment agencies is to provide an atmosphere within which businesses can prosper); see also Schulte Oil Co., 882 P.2d at 72 (commenting that states grant tax rebates to the area of manufacturing in order to encourage certain industries to build their facilities within the state).

⁶. See Iris Yokoi, CRA Chief Unveils City Economic Plan, S.F. EXAMINER, Jan. 31, 1993, at 10 (reporting that consulting attorney David Friedman encourages a five step process to implement economic development plans: (1) creating a development blueprint, (2) asking businesspeople to help combat negative perceptions of the city, (3) encouraging businesses to remain in the area, (4) maintaining a funding program to foster growth, and (5) maximizing federal and state funds).

⁷. See SENATE COMMITTEE ON LOCAL GOVERNMENT, COMMITTEE ANALYSIS OF SB 732, at 1 (May 19, 1993) (stating that redevelopment agencies are being used to improve blighted communities, and in 1989-90 city redevelopment agencies generated $8.1 million statewide); see also SENATE FLOOR, COMMITTEE ANALYSIS OF SB 845, at 2 (July 2, 1993) (asserting that allowing exemptions on the purchase of manufacturing equipment within designated enterprise zones is meant to encourage investment in depressed areas in need of private sector investment); Peter Dreier, America’s Urban Crisis: Symptoms, Causes, Solutions, 71 N.C. L. REV 1351, 1388 (1993) (commenting that one fifth of all full-time workers in America today are receiving poverty-level
Opponents of Chapter 204 argue that granting tax rebates to owners of manufacturing equipment is contrary to the original intention of redevelopment law. In addition, certain critics argue against granting tax rebates to industries that are not native to the area because relying on outside businesses to remain in one town is dangerous to that town's stability.

Nevertheless, tax rebates and other steps arguably will help to revitalize the economic climate in America.

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Revenue and Taxation; sales and use tax exemption-meals to elderly and disabled persons

Revenue and Taxation Code § 6363.7 (new).
SB 311 (O'Connell); 1995 STAT. Ch. 240
(Effective July 31, 1995)

Under existing law, gross receipts from the sale, storage, use or other consumption of goods are taxed. Many exemptions are made for various goods, including meals and food products given to low income elderly persons at or below cost by nonprofit organizations or governmental agencies. Also, various wages, which translates into 30 million Americans referred to as the "working poor"; id. at 1388-89 (suggesting that new sources of capital investment are needed to sustain economic growth, such as granting tax incentives to encourage private enterprises to invest in productive jobs).

8. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 923, at 3 (Apr. 6, 1995); see id. (stating that certain opponents, such as the California State Association of Counties, argue that the purpose of redevelopment law is to retire debt in order to cover other expenses of the agency, and SB 923 runs counter to this purpose).

9. Froma Harrop, How Towns Lose Their Souls, S.F. EXAMINER, Mar. 18, 1995, at A17; see id. (arguing that towns need to reject offers of lower taxes to certain manufacturers and industries that could harm the environment or run counter to the original economy in that town).

10. See SENATE FLOOR, COMMITTEE ANALYSIS OF SB 732, at 3 (June 8, 1993) (suggesting that redevelopment agencies will boost local economies by attracting high-volume retailers and auto malls); see also Dreir, supra note 7, at 1388-89 (stating that public job programs, along with bank and tax reform policies, must be implemented to improve America's economy).

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1. See CAL. REV. & TAX. CODE § 6006(a) (West Supp. 1995) (defining "sale" to mean transferring some title for consideration, furnishing food or drink for consideration, and producing property for consideration, even when the consumer furnishes the materials).

2. See id. § 6008 (West 1987) (specifying that "storage" means any retention for any purpose other than for sale).

3. See id. § 6009 (West 1987) (defining "use" as the exercise of dominion or control incident to an ownership or lessee interest).

4. Id. §§ 6051, 6051.2, 6051.3 (West Supp. 1995).

5. See id. § 203(c) (West Supp. 1995) (indicating that nonprofit educational institutions must have no part of their net income inure to the benefit of any private person); id. § 231(d) (West Supp. 1995) (defining "not conducted for profit" as an operation where no part of net earnings inures to the benefit of a private shareholder or individual); see also Sarah Dix Hamlin Sch. v. San Francisco, 221 Cal. App. 2d 336, 341-42, 34 Cal. Rptr. 376, 380 (1963) (holding that surplus operating income does not invalidate nonprofit status when
organizations are also exempt from sales tax. Chapter 240 allows a sales tax exemption for meals delivered to homebound elderly or disabled persons by a nonprofit volunteer organization.

**COMMENT**

Demand for meal delivery for homebound seniors is rising while funding continues to shrink. Generally, nonprofit volunteer organizations that deliver meals to elderly persons assist in relieving the strain of poverty. Therefore, these organizations would generally be exempt from sales and use taxes by qualifying

1. Estate of Letts, 200 Cal. App. 2d 705, 713, 19 Cal. Rptr. 502, 505 (1962) (stating that "not for profit" is synonymous with "no part of any net income benefitting any individual"); id. (defining "net income" as distributable profit); id. (clarifying that profit means excess of income over earnings); id. (explaining that individual, as used in the "not for profit" definition is a person who normally receives profit distributions); San Gabriel Cemetery Ass'n v. County of Los Angeles, 49 Cal. App. 2d 624, 626, 122 P.2d 330, 332 (1942) (clarifying that profit means net earnings, the benefits of which accrue directly or indirectly to individuals), cited with approval in Westminster Mem. Park v. County of Orange, 54 Cal. 2d 488, 496, 354 P.2d 247, 253, 6 Cal. Rptr. 775, 781 (1960).

2. CAL. REV. & TAX. CODE § 6374 (West 1987); see id. § 6362.3 (West Supp. 1995) (exempting the sale of newspapers and periodicals); id. § 6363.6 (West 1995) (exempting meals served to residents or patients of a variety of medical and mental resident facilities); id. § 6369.5 (West 1987) (exempting sales of medical oxygen equipment for personal use); id. § 6375 (West Supp. 1995) (exempting items used to modify vehicles for physically handicapped persons or purchases of vehicles already modified); id. § 6375.5 (West 1987) (exempting children's clothing sold to nonprofit organizations for free distribution).

3. Id. § 6375 (West Supp. 1995); see id. (allowing a sales tax exemption for organizations that qualify for the "welfare exemption" if engaged in relief of poverty or distress); see also id. § 214(a)(3) (West Supp. 1995) (defining the "welfare exemption" from property tax as that property used exclusively for religious, hospital, scientific or charitable purposes and operated by a community chest, fund, foundation or corporation if the organization is nonprofit and the property or its earnings do not benefit an individual).

4. CAL. REV. & TAX CODE § 6363.7 (enacted by Chapter 240); cf. CONN. GEN. STAT. ANN. § 12-412(46) (West 1993) (allowing a sales tax exemption for sale of meals delivered to elderly, disabled or other homebound persons); FLA. STAT. ANN. § 212.08(7)(k) (West 1989) (allowing a sales tax exemption for meals sold and delivered by nonprofit volunteer organizations to handicapped, elderly or indigent persons for charitable purposes); KAN. STAT. ANN. § 79-3606(w) (Supp. 1994) (allowing a sales tax exemption for meals delivered or served in a group to homebound persons 60 years of age or older or homebound disabled persons); 1995 Minn. Laws 264 (West) (amending Minnesota Statute § 297A.01(3)(c) to exclude meals served and delivered to elderly or handicapped persons by a governmental agency or charitable organization); N.J. STAT. ANN. § 55:32B-3(c)(2) (West Supp. 1995) (exempting from sales tax meals delivered or served in a group to homebound persons 60 years of age or older or homebound disabled persons, provided the organization is governmental or open to the general public within a geographic area); N.C. GEN. STAT. § 105-164.13(31) (1992) (exempting from sales tax the nonprofit sale of meals delivered to elderly and incapacitated persons at their homes by charities).

5. Sara Catania & Christina Lima, Meals on Wheels Dishes Up More Than Food, L.A. TIMES, Nov. 24, 1994, at B1; see id. (explaining that these programs are becoming more difficult to manage as the demand rises and budgets are cut); Isaac Guzman, Going Hungry: Budget Crunch Forces Nonprofit Group to Curtail Meals to Elderly, L.A. TIMES, Apr. 5, 1995, at B1 (describing difficulties in meeting the current demand for services without increasing funds).

6. Telephone Interview with Jim Barga, Supervisor of Exemption Unit, State Board of Equalization (June 23, 1995) (notes on file with the Pacific Law Journal); Telephone Interview with Sheila Sarem, Legislative Analyst with the State Board of Equalization (June 23, 1995) (notes on file with the Pacific Law Journal).
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for the “welfare exemption” if the organizations filed for the exemption. The application process, however, can be time-consuming and difficult for a volunteer organization. Chapter 240 would clarify that these organizations may receive the sales tax exemption without filing for the property tax “welfare exemption.” This will greatly assist those charitable organizations that deliver meals to the elderly since most operate on limited funding with donated materials and time. Chapter 240 was introduced, specifically, to assist two Meals on Wheels organizations in the author’s district.

June D. Coleman

11. See CAL. REV. & TAX. CODE § 214 (West Supp. 1995) (defining eligibility for the “welfare exemption” to property taxes as including nonprofit charitable organizations using property for charitable purposes without benefiting private individuals); id. § 6375 (West Supp. 1995) (allowing a sales tax exemption for organizations that qualify for the “welfare exemption” and are engaged in relieving poverty or distress).

12. Telephone Interview with Jim Barga, supra note 10; Telephone Interview with Sheila Sarem, supra note 10; see CAL. REV. & TAX. CODE § 214 (West Supp. 1995) (describing the filing process for “welfare exemption” to property tax).

13. Telephone Interview with Tara Mesick, Legislative Assistant to Senator Jack O’Connell (June 21, 1995) (notes on file with the Pacific Law Journal); see CAL. REV. & TAX. CODE §§ 214.8, 254, 254.5, 255 (West Supp. 1995) (describing various “welfare exemption” requirements including tax-exempt qualification of the organization under California Revenue and Taxation Code § 23701d or Internal Revenue Code 501(d)(3), an annually submitted affidavit, certified copies of the financial statements for first time applicants and upon request thereafter, and the meeting of specified deadlines for filing); id. § 259.5 (West 1987) (listing the contents of the affidavit, which includes showing that the property and the owner meet all the criteria entitling the property to the exemption); id. § 261(a) (West 1987) (mandating that the interest in real property be recorded); see also KENNETH A. ERHMAN, ESQ. & SEAN FLAVIN, ESQ., TAXING CALIFORNIA PROPERTY §§ 6:41 (outlining the “welfare exemption” filing process); ASSESSMENT STANDARDS DIVISION, PROPERTY TAXES DEPARTMENT, CALIFORNIA STATE BOARD OF EQUALIZATION, ASSESSORS’ HANDBOOK, AH 267, 267-45-267-55 (1985) (delineating the certification procedure for property subject to the “welfare exemption”); Telephone Interview with Jim Barga, supra note 10 (discussing the annual process of filing with the county assessor, which includes presentation of a statement that property is irrevocably dedicated to the charitable purpose and will be disposed of to another organization for a charitable purpose upon dissolution, a tax exemption letter from the Internal Revenue Service or Franchise Tax Board, and financial statements). See generally ERHMAN & FLAVIN, supra, §§ 6:21-6:35 (3d ed. 1994 & Supp. 1994) (describing the “welfare exemption” for real property); ASSESSMENT STANDARDS DIVISION, supra, 267-1-267-44 (discussing the “welfare exemption” requirements and limitations).

14. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 311, at 1-2 (May 1, 1995); Telephone Interview with Tara Mesick, supra note 13; Telephone Interview with Sheila Sarem, supra note 10.

15. Telephone Interview with Tara Mesick, supra note 13.

16. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 311, at 1 (July 6, 1995); see id. (noting that both organizations have discovered that they are ineligible for the welfare exemption since they do not own property, even though the organizations qualify as charitable organizations under the Internal Revenue Code).