1-1-1978

Taxation

University of the Pacific; McGeorge School of Law

Follow this and additional works at: https://scholarlycommons.pacific.edu/mlr
Part of the Legislation Commons

Recommended Citation
University of the Pacific; McGeorge School of Law, Taxation, 9 Pac. L. J. 653 (1978).
Available at: https://scholarlycommons.pacific.edu/mlr/vol9/iss1/37
The constitutional mandate for the financing of California’s public schools, set forth by the Supreme Court of California in its decisions in *Serrano v. Priest* [18 Cal.3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976); 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (demurrer reversed on appeal) (1971)], provides that there must be “equality of educational opportunity [which] requires that all school districts possess an equal ability in terms of revenue to provide students with substantially equal opportunities for learning” [18 Cal. 3d at 747-48, 557 P.2d at 947-48, 135 Cal. Rptr. at 363-64]. The bases upon which the *Serrano* court held that the existing state school financing system violated the equal-protection-of-the-laws provision of the California Constitution [See CAL. CONST. art. I, §7(b), art. IV, §16] were: (1) that this system classifies on the basis of wealth, a “suspect classification” [5 Cal. 3d at 597-604, 487 P.2d at 1250-55, 96 Cal. Rptr. at 610-15, accord *Serrano* v. Priest, 18 Cal. 3d at 760-61, 557 P.2d at 947-48, 135 Cal. Rptr. at 363-64]; and (2) that education is a fundamental interest upon which the suspect classification has a “direct and significant impact” [See 5 Cal. 3d at 604-610, 498 P.2d at 1255-59, 96 Cal. Rptr. at 615-19, accord *Serrano* v. Priest, 18 Cal. 3d at 761, 557 P.2d at 948, 135 Cal. Rptr. at 364]. In other words, the court held that the system discriminated against the poor because it made the quality of a child’s education a function of the
wealth of his or her parents and neighbors [See 5 Cal. 3d at 589, 498 P.2d at 1244, 96 Cal. Rptr. at 604, accord Serrano v. Priest, 18 Cal. 3d at 768-69, 557 P.2d at 952-53, 135 Cal. Rptr. at 368-69].

The majority in Serrano specifically delineated four then existing aspects of the state’s school finance system considered by the court to be violative of the California Constitution: (1) the basic aid payments tended to widen the gap between low-wealth and high-wealth districts [18 Cal. 3d at 744-45, 557 P.2d at 936-37, 135 Cal. Rptr. at 352-53. See generally CAL. EDUC. CODE §§41790, 41800]; (2) voted overrides allow wealthier districts to increase revenue limits, negativing any possible “convergence” of revenues between low-and high-wealth districts [18 Cal. 3d at 745, 557 P.2d at 937, 135 Cal. Rptr. at 353. See generally CAL. EDUC. CODE §42244]; (3) the availability of school revenues was conditioned upon the wealth of the district and as a result a greater tax effort was required of lower wealth districts; and (4) the quality of education was dependent upon the level of district expenditures per pupil [18 Cal. 3d at 754-55, 557 P.2d at 944, 135 Cal. Rptr. at 360]. The court, however, emphasized that “voted tax overrides which . . . provid[e] more affluent districts with a ready means for meeting . . . legitimate and proper educational objectives, will be recognized by the poorer districts, unable to support the passage of such overrides, . . . as but a new and more invidious aspect of . . . [the] ‘cruel illusion’ [that poorer districts can tax themselves into excellence]” [Id. at 769, 557 P.2d at 953, 135 Cal. Rptr. at 369; see 5 Cal. 3d at 611, 498 P.2d at 1260, 96 Cal. Rptr. at 620]. A voted tax override is the method by which taxpayers may increase the revenue limits that are established by local superintendents of schools pursuant to Education Code Sections 42233 and 42238 [See CAL. EDUC. CODE §42280] and a revenue limit is that amount of money per pupil a district is permitted to spend annually [CALIFORNIA ASSEMBLY COMMITTEE ON EDUCATION, SERRANO/PRIEST STAFF TASK FORCE SUMMARY OF FINDING, Appendix D (Jan. 1977) (hereinafter cited as SERRANO/PRIEST TASK FORCE SUMMARY)].

Chapter 894 is an attempt by the California Legislature to bring California’s method of financing public schools within the constitutional limitations set forth by the supreme court in Serrano [CAL. STATS 1977, c. 894, §89, at —]. Although this legislation addresses those areas that the court criticized as being anti-equalizing [See, e.g., CAL. STATS. 1977, c. 894, §§26, 32, 39 at —], the question of whether Chapter 894 complies with the directive in Serrano to close the gap in expenditures per pupil that the court said could be efficiently and effectively achieved within six years [See 18 Cal. 3d at 749 nn.21, 22, 557 P.2d at 940 nn.21, 22, 135 Cal. Rptr. at 356 nn.21, 22], apparently remains open for debate [See Sacramento Bee, Sept. 3, 1977, §A, at 1, col. 5].
Foundation Program

California supports its state school system primarily through a foundation program, which establishes minimum financial support levels for public school pupils from state and local revenue [Post & Brandsma, *The Legislature's Response to Serrano v. Priest*, 4 PAC. L.J. 28, 30 (1973); see, e.g., CAL. EDUC. CODE §§41704, 41712, 84721]. The foundation program consists of basic aid, district aid and equalization aid [SERRANO/PRIEST TASK FORCE SUMMARY, Appendix D; see CAL. EDUC. CODE §§41700-41792]. Chapter 894 provides for increases in the foundation program, above those already provided for by law [See CAL. EDUC. CODE §41718], for low-wealth, equalization-aided districts with revenue limits below 120 percent of the foundation program [CAL. EDUC. CODE §41718.5]. Basic aid is awarded to all school districts, regardless of wealth, and is based on the average daily attendance in the district [CAL. EDUC. CODE §§41790, 41800]. Under prior law, the amount of basic aid allowed to school districts was $125 per unit of average daily attendance and pursuant to Chapter 894, this amount has been lowered to $120 per unit of average daily attendance [Compare CAL. EDUC. CODE §§41790, 41800 with CAL. STATS 1976, c. 1010, §2, at —].

District aid is computed by the application of a computational tax rate on each $100 of assessed valuation of property located in the school district [CAL. EDUC. CODE §41761]. Equalization aid is determined by the amount by which the foundation support level exceeds the sum of district and basic aid, and therefore, is awarded in inverse proportion to wealth [See CAL. EDUC. CODE §§41810, 41811]. Prior to the enactment of Chapter 894, it was possible that when the value of the property increased, the amount of equalization aid dropped, a phenomenon known as “slippage” [See SERRANO/PRIEST TASK FORCE SUMMARY 36, Appendix D]. By adding Sections 41761.3 and 41761.5 to the Education Code, Chapter 894 provides that commencing with fiscal year 1978-79, for equalization aided districts, the computational tax rate shall be adjusted so that the amount of equalization aid will be maintained at the 1977-78 level, which should eliminate most “slippage.” The increase in the foundation program for low-wealth districts, along with decrease in the basic aid payments and the “anti-slippage” provision, would appear to supply the basis for implementing the programs enacted by Chapter 894 that are essential to achieving compliance with the Serrano mandate. [See generally CAL. EDUC. CODE §§42000-42007 (Guaranteed Yield Programs), §§42500-42502 (equalization tax)].

Equalization of Voted Overrides

Since locally generated school district revenues are produced by the
imposition of property taxes [See CAL. EDUC. CODE §§14200-14204], the tax effort required of low-wealth districts to reach revenue limit increases is much greater than for higher-wealth districts [See SERRANO/PRIEST TASK FORCE SUMMARY 13]. Prior to the enactment of Chapter 894, there existed a power equalization mechanism for voted revenue limit overrides [See CAL. STATS. 1977, c. 36, §§458-462, at —]. “Power-equalization” means that higher wealth districts that are able to support higher revenue limits share this “power” with the lower wealth districts, which normally would have to impose highly burdensome tax rates to reach their revenue limit increases [See Post & Brandsma, The Legislature’s Response to Serrano v. Priest, 4 PAC. L.J. 28, 36-38 (1973)]. Whereas the power equalization provision under the prior law applied only to those districts with revenue limits above 150 percent of the minimum financial support level (foundation program), the power equalization provision in Chapter 894 applies the tax rate determined in the newly established Guaranteed Yield Program (discussed infra) to all districts, regardless of revenue limit, with assistance to lower wealth districts in reaching their new revenue limits being administered through the Guaranteed Yield Program [Compare CAL. EDUC. CODE §§42280-42283 with CAL. STATS. 1977, c. 36, §§458-462, at —].

Guaranteed Yield Program

In addition to the aid provided to school districts under the foundation program, Chapter 894 establishes the Guaranteed Yield Program [CAL. EDUC. CODE §§42000-42007], which commences in fiscal year 1978-79, and provides for supplemental state support to equalization aided districts whose revenue limits exceed the foundation program [CAL. EDUC. CODE §42000]. The combination of the supplemental support from this program to low-wealth districts and the contributions from the high-wealth districts pursuant to the power equalization provisions, discussed above, would seem to have the effect of closing the gap in tax revenue and tax rate disparities that exist between low- and high-wealth districts, a goal that the Serrano decision indicated was essential [See 18 Cal. 3d at 746-48, 557 P.2d at 937-39, 135 Cal. Rptr. at 353-55].

In conjunction with the Guaranteed Yield Program, Chapter 894 implements a School District Equalization Tax [CAL. EDUC. CODE §§42500-42502], which provides that high-wealth, non-equalization-aided (or “basic aid”) districts phase in a uniform tax rate to be applied to the amount by which the district’s revenue limit exceeds the foundation program [CAL. EDUC. CODE §42501]. The tax rate applied is the one used in the Guaranteed Yield Program and the amount produced by imposition of this tax is to be
Taxation

deposited with the State School Fund [CAL. EDUC. CODE §§42501(c), 42502].

Tax Rates and Revenue Limits

A further provision added by Chapter 894 that is apparently designed to comply with Serrano, is the imposition of a minimum general purpose property tax rate for school districts [See CAL. EDUC. CODE §§42520-42523]. The minimum tax rates per $100 of assessed valuation are as follows: (1) for elementary school districts, $1.00; (2) for high school districts, $.80; and (3) for unified school districts, $1.80 [CAL. EDUC. CODE §42520]. If the property tax rate for any district is less than this minimum, then the district must increase its property tax rate to the prescribed amount and the revenues produced in excess of the amount that would have been produced with the lower tax rate are to be deposited with the State School Fund [CAL. EDUC. CODE §§42521-42523]. Since the higher wealth districts are the ones with lower tax rates [SERRANO/PRIEST TASK FORCE SUMMARY 10-13], this provision will apparently affect the gross disparities in tax rates that presently exist between low- and high-wealth districts and will add to the available funds for supplemental state aid [See CAL. EDUC. CODE §§42007, 42521, 42522].

For those districts whose revenue limits exceed the foundation programs by more than 120 percent, Chapter 894 now provides that inflation adjustments to those limits must be restricted to no more than seven percent, regardless of any change in the foundation support levels [CAL. EDUC. CODE §42238(d)(2)]. Further, Section 42239 has been amended to provide additional revenue limit adjustments in case a district’s average daily attendance drops by more than one percent. Prior to the enactment of Chapter 894, when there was a drop in such average daily attendance revenue limits were increased by an amount equal to 75 percent of the loss in average daily attendance [See CAL. STATS. 1976, c.1010, §2, at —]. Commencing in 1978-79, in addition to the 75 percent adjustment of the preceding year’s change, the revenue limit may be adjusted by an additional 50 percent of the difference in the second preceding year [CAL. EDUC. CODE §42239(b)]. These revisions would logically seem to result in the stabilization of state aid to lower-wealth districts through the guaranteed yield program while allowing higher wealth districts stability in their overall revenues.

All of these “Serrano-related” provisions enacted by Chapter 894, if taken together, would seem to have an impact on the disparities in expenditures per pupil among school districts, which the court said “cause and perpetuate substantial disparities in the quality and extent of availability of educational opportunities” [18 Cal. 3d at 747, 557 P.2d at 939, 135 Cal.

Selected 1977 California Legislation 657
Taxation

Rptr. at 355]. Given the extent of these disparities as they presently exist [See SERRANO/PRIEST TASK FORCE SUMMARY 11-13], however, it has been conceded by one of the authors of the new law that the provisions enacted by Chapter 894, i.e., the equalization of voted overrides, the reduction of basic aid, supplemental state support under the Guaranteed Yield Program, and other provisions that recapture funds from high-wealth districts, only tend to reduce these disparities and will not in fact strictly comply with the Serrano mandate [See Sacramento Bee, Sep. 3, 1977, §A at 1, col. 5]. Besides attempting to comply with the state supreme court’s decision in Serrano, Chapter 894 also enacts legislation intended to improve the quality of California’s public school system [CAL. STATS. 1977, c. 894, §42, at —] and to reform the state’s method of funding the State Teacher’s Retirement System [See, e.g., CAL. EDUC. CODE §§23400, 23401.5, 42050-42057], the treatment of which are beyond the scope of this discussion.

See Generally:
1) S. B. WITKIN, SUMMARY OF CALIFORNIA LAW, Constitutional Law §404 (invalid classifications) (8th ed. 1974).

Taxation; senior citizens property tax postponement

Civil Code §§2924b, 2931c (amended); Government Code §14735, Chapter 6 (commencing with §16180) (new); §27282 (amended); Revenue and Taxation Code Part 10.5 (commencing with §19501) (repealed); §§2514, 2515, 3201, 3202, 3203, 3204, 3375, Part 10.5 (commencing with §20501) (new); §§2505, 17037 (amended); Welfare and Institutions Code §11008.4 (new).

AB 1070 (Chel); STATS 1977, Ch 1242 (Effective October 1, 1977)
Support: California Franchise Tax Board; California Department of Aging

Establishes a mechanism for the deferral of property taxes by qualified senior citizens; specifies age, ownership, occupancy and income requirements for eligibility; describes the nature of the obligation created by postponement of property taxes; provides for state’s remedies for claimant’s failure to continue to be eligible for postponement or default on other obligations secured by a lien on the property; describes course of action in case of condemnation of property secured by a lien under this program.

In response to the voters’ approval of Proposition 13 on June 8, 1976, Chapter 1242 enacts the Senior Citizens Property Tax Postponement Act of 1977 [CAL. REV. & TAX. CODE §§20581-20646; see CAL. STATS. 1977, c. 1242 §1, at —]. As a constitutional amendment, Proposition 13 authorized

Pacific Law Journal Vol. 9
the legislature to provide for the postponement of ad valorem property taxes on the dwelling owned and occupied by a person of low or moderate income who is 62 years of age or older [Senate Constitutional Amendment 16, c. 2, Feb. 3, 1976]. In addition, Proposition 13 authorized the legislature to define all terms establishing eligibility, establish necessary administrative procedures, and provide for reimbursement to taxing agencies for revenues lost by implementation of this tax deferral program [See Senate Constitutional Amendment 16, c. 2, Feb. 3, 1976]. Further, Chapter 1242 enacts the Homeowners and Renters Property Tax Assistance Law [CAL. REV. & TAX. CODE §§20501-20564], repealing and reenacting the major provisions of what was the Gonsalves-Deukmejian-Petris Act [CAL. STATS. 1976, c. 1060, §§5-13, at —; CAL. STATS. 1971 Ex. Sess., c. 1, §§204.1-.5, at 5041; CAL. STATS. 1967, c. 963, §103.5, at 2503], which provided direct aid for property taxes to senior citizens according to their household income. Senior citizens who are eligible for assistance under this property tax assistance program are to apply that aid towards reducing the lien created by participation in the tax postponement program for that year [See CAL. REV. & TAX. CODE §20564].

Eligibility

To be eligible for property tax postponement under Chapter 1242, a claimant must be 62 years of age or older on the last day of the calendar year that ends prior to the commencement of the fiscal year for which postponement is sought [CAL. REV. & TAX. CODE §20505(b)]. Further, a claimant, a claimant and his or her spouse, or a claimant and any other person eligible for property tax postponement must own and occupy a residential dwelling, which is defined as the dwelling and that amount of land that is necessary for the use of the dwelling as a home, including condominiums and mobilehomes that are assessed as realty, and the land on which they are situated [CAL. REV. & TAX. CODE §20583(a)]. In addition, a claimant must have an equity in the property of at least 20 percent of the full value of the residential dwelling [CAL. REV. & TAX. CODE §20583(b)(1)]. If a claimant’s interest is pursuant to a contract for the sale of the land, or a life estate, then he or she must have the permission of the vendor or the holder of the reversionary interest in order to postpone the taxes on the land [CAL. REV. & TAX. CODE §20583(b)(2)]. Further, in order to qualify under this tax postponement program, claimants must receive a separate tax bill, claim the homeowners’ exemption and may not be delinquent in any taxes or special assessments except those delinquent on July 1, 1977, which may be postponed upon implementation of this program [CAL. REV. & TAX. CODE §20583(a), (b)(3), (b)(4)]. The actual language appearing in this Act excepts
assessments and taxes delinquent on July 1, 1978. Based, however, upon correspondence with the Franchise Tax Board and other statutory language in Chapter 1242, it would appear that an error has been made in this section and the cutoff date for such delinquencies is actually July 1, 1977 [Letter from Larry Counts, Assistant Chief Counsel, Franchise Tax Board to Donna Epstein-Pauly, Oct. 11, 1977 (copy on file at the Pacific Law Journal); see CAL. REV. & TAX. CODE §20583(b)(4)(B); CAL. STATS. 1977, c. 1242, §20, at —]. Any penalties or interest accrued on delinquent property taxes assessed for the fiscal year 1976-77 are cancelled upon payment of these taxes by the state [CAL. REV. & TAX. CODE §20583(b)(4)(B)]. Again, the language of Chapter 1242 is “fiscal year 1976-78” and for reasons identical to those previously stated, it would appear that “fiscal year 1976-77” is the correct year [Letter from Larry Counts, Assistant Chief Counsel, Franchise Tax Board to Donna Epstein-Pauly, Oct. 11, 1977 (copy on file at the Pacific Law Journal); see CAL. REV. & TAX. CODE §20583(b)(4)(B); CAL. STATS. 1977, c. 1242, §20, at —].

In addition, eligibility for this postponement program requires that household income must be less than $20,000, adjusted annually to reflect the percentage change in the California Consumer Price Index for the preceding year [CAL. REV. & TAX. CODE §20585]. Household income is determined by the income of all persons whose principal place of residence is the residential dwelling of the claimant, excepting bona fide renters, minors, and students [CAL. REV. & TAX. CODE §§20504, 20506].

“Income” as used in Chapter 1242 includes, inter alia, income as defined in Section 17072 plus those cash items excluded from gross income pursuant to Sections 17131 through 17157 (e.g., employee death benefits, workers’ compensation benefits, life insurance proceeds), social security and railroad retirement benefits, cash public assistance and relief, gross amount of pensions and annuitities, unemployment insurance payments, interest from any source, contributions to a tax-sheltered retirement plan or deferred compensation plan, and gifts or inheritances in excess of $300 [CAL. REV. & TAX. CODE §20503]. The determination of income is based on the calendar year ending prior to the commencement of the fiscal year for which postponement is claimed [CAL. REV. & TAX. CODE §20503(a)].

PROCEDURE

A taxpayer desiring to participate in this new program must file an application containing information evidencing eligibility for property tax postponement including the description, location and parcel number of the property and, beginning in fiscal year 1978-79, documentation that the claimant possesses at least 20 percent equity in the premises [CAL. REV. &
TAX. CODE §20621; see CAL. STATS. 1977, c. 1242, §20, at —]. For fiscal year 1977-78, the 20 percent equity test may be satisfied by a declaration by the claimant under penalty of perjury and subject to the subsequent audit verification by the Franchise Tax Board [CAL. STATS. 1977, c. 1242, §20, at —]. The application for postponement of property taxes is made under penalty of perjury and, beginning with fiscal year 1978-79, costs of up to $50 incurred in obtaining the necessary documentation are to be reimbursed by the Franchise Tax Board if the claimant’s application is approved [See CAL. REV. & TAX. CODE §20621; CAL. STATS. 1977, c. 1242, §20, at —]. Property taxes in California are paid in two equal installments, the first is delinquent on December 10, and the second on April 10 [See CAL. REV. & TAX. CODE §§2617, 2618]. Claims for postponement under this program must be filed annually, and to be eligible for postponement of both installments, the claim must be submitted between May 15 and September 30 of the calendar year in which the fiscal year for which postponement is sought commences [CAL. REV. & TAX. CODE §20622]. If the application is made after September 30 and on or before January 31, then the claimant will be eligible for postponement of the second installment only [CAL. REV. & TAX. CODE §20622]. The legislature has made an exception to these provisions for the 1977-78 fiscal year, providing that a claimant may apply for postponement of both installments through January 31, 1978 [See CAL. STATS. 1977, c. 1242, §20, at —].

When the Franchise Tax Board has approved the application, the State Controller must issue a “certificate of eligibility” [CAL. REV. & TAX. CODE §20602(a)-(b)], which the claimant, his or her spouse, or an authorized agent must sign [CAL. REV. & TAX. CODE §20602(d)]. Once the local tax collector has countersigned this certificate, it constitutes a written promise by the State of California to pay the amount of money specified to the local taxing agency and is deemed to be a negotiable instrument for the purposes of the payment of property taxes [CAL. REV. & TAX. CODE §§2505(b), 2514(a), 20602(d)]. Acceptance of this certificate by the local taxing agency constitutes payment in full of a claimant’s deferable property taxes [CAL. REV. & TAX. CODE §2505(b)-(c)]. If the claimant’s property taxes are paid by a lender, via an impound or trust account, the claimant will receive a refund check from the proper public authority, thus ensuring that the taxes on the residence are not paid twice [CAL. REV. & TAX. CODE §§2514(a)(3), 20602(c)].

Liability

Deferment of property taxes pursuant to this Act creates a duly recorded lien in favor of the State of California on the property of the claimant for

Selected 1977 California Legislation
which taxes have been deferred [CAL. GOV'T CODE §16182]. This obligation is created when the Controller pays the local taxing agency upon presentation of an executed certificate of eligibility, and interest accrues on the amount of taxes paid at an annual rate of seven percent beginning on the first day of the month following the month payment was made by the state [CAL. GOV'T CODE §§16182, 16183]. As payments of deferred property taxes are received or additional disbursements for such taxes are made by the Franchise Tax Board, the amount of the property lien will be adjusted accordingly by the State Controller [CAL. GOV'T CODE §16184]. Subsequently, upon satisfaction or discharge of the obligation, the State Controller shall record an instrument releasing the lien on the claimant’s property [CAL. GOV'T CODE §16186].

Repayment, Delinquency, and Enforcement

Amounts advanced by the state on behalf of the claimant shall become due and payable if: (1) the claimant dies or ceases to occupy, sells, conveys or disposes of the property; (2) a co-owning claimant dies, and the surviving co-owner, who is the claimant’s spouse or is otherwise eligible to postpone his or her taxes, allows any tax or special assessment to become delinquent after July 1, 1977, or dies, ceases to occupy, sells, conveys or disposes of the property; (3) the claimant fails to perform some act that is secured by a lien senior to that of the state; or (4) it is discovered that postponement was erroneously allowed because an eligibility requirement was not met [CAL. GOV'T CODE §16190]. The amounts advanced shall not become due, however, if: (1) the claimant continues to own and occupy, but ceases to postpone his or her property taxes; (2) the surviving spouse of the claimant continues to own and occupy but either becomes ineligible or elects not to postpone; or (3) the surviving eligible co-owner continues to own and occupy but elects not to postpone; in any case, the owner and occupier of the premises may not be delinquent on any other taxes or special assessments [CAL. GOV'T CODE §16191].

If the Controller determines that the amounts owing have become due and payable pursuant to Section 16190 of the Government Code, the Controller may: (1) demand payment of such amount; (2) file a claim against the estate of any decedent whose property is liable for such amount if the Controller has reason to believe that the sale of the property will not satisfy the amount secured by the lien; (3) ask the Attorney General to bring an action to enforce the lien pursuant to Section 2931c of the Civil Code; or (4) direct the Department of General Services to sell the property in accordance with Sections 3201 through 3204 of the California Revenue and Taxation Code [CAL. GOV'T CODE §16201].

The State Controller is to be notified of the pending foreclosure of any encumbrances on property upon which there is a lien securing postponed.
Taxes [CAL. CIV. CODE §29424b(3)(b)(F); CAL. GOV'T CODE §16187; CAL. REV. & TAX. CODE §3375]. Upon such notice the Controller may: (1) pay the delinquency or amount due and add that amount to the amount secured by the lien on the property; (2) bid on the property at the auction up to the amount secured by the state’s lien and any other senior lien; or (3) merely acknowledge receipt of the notice [CAL. GOV'T CODE §16200].

In addition, if property subject to a lien created by postponement of taxes pursuant to this program is condemned, funds discharging the lien will be placed in an impound account for a period of 18 months [CAL. GOV'T CODE §16210]. This account may be drawn upon by the claimant towards the purchase price of a new residential dwelling and the amount so drawn shall constitute a lien on the new residential dwelling [CAL. GOV'T CODE §16211]. After the passage of the 18 month period, the money impounded will be transferred into the state General Fund [CAL. GOV'T CODE §16213]. Finally, Chapter 1242 provides that the postponement of taxes will not be deemed to be income or resources for purposes of various public assistance programs [CAL. WELF. & INST. CODE §11008.4].

**COMMENT**

The Senior Citizens Property Tax Postponement Act of 1977, as enacted by Chapter 1242, is an apparent attempt by the legislature to help ease the acute housing shortage, the difficulty of surviving on a fixed income while meeting property tax obligations, and other similar problems plaguing senior citizens [See California Voters Pamphlet, Argument in Favor of Proposition 13, June 8, 1976]. The fiscal impact on the local level will probably be minimal since the legislature has provided for reimbursement to local taxing agencies that accept certificates of eligibility as payment on property taxes for revenues and some costs [See CAL. GOV'T CODE §16180; CAL. REV. & TAX. CODE §20602(d); CAL. STATS. 1977, c. 1242, §19, at ——]. It appears, however, that local taxing agencies will lose any penalties and interest that may have accrued on property taxes that become delinquent during fiscal year 1976-77 and are postponed under this Act [See CAL. REV. & TAX. CODE §20583(b)(4)(B)].

Statewide, the costs of implementing this program may be quite high for the first few years since there will be a period of time during which no deferred taxes are being repayed while new applicants are entering the program [See CAL. GOV'T CODE §16180 (appropriating five million dollars to fund the program)]. Once the original applicants begin repayment, however, it seems possible that the program could become self-supporting. In terms of dollars, according to the legislative analyst’s office, state costs could, depending on participation, range from $15 million with five percent
participation on up to $85 million (based on 1970 U.S. Census figures updated by the Department of Finance) [See Sacramento Press J., Apr. 5, 1977, at 1, col. 3]. States that have implemented similar programs have witnessed participation that ranges from about three to five percent of qualified individuals [See Chen, Present Status and Fiscal Significance of Property Tax Exemptions for the Aged, 18 NAT’L TAX J. 162 (1965). See generally Or. Rev. Stat. §§311.660-.696].

There appear to be a number of problems that may be encountered in the administration of this new tax deferment program. First, since there is no provision for a monetary limitation on the amount of taxes that may be deferred, it would seem possible that the amount of the lien could exceed the value of the land. Further, since the state’s enforcement of the lien is limited to the property itself or the estate of a deceased claimant [See Cal. Rev. & Tax. Code §16201] and an equity of only 20 percent is required [Cal. Rev. & Tax. Code §20583(b)(1)], participants with few or no other assets could arguably defer their taxes for life and the state could be in a position never to recoup its entire investment.

Since the presentation of a certificate of eligibility constitutes payment in full of property taxes owing [Cal. Rev. & Tax. Code §2505(b)(c)], a further problem arising from Chapter 1242 is whether claimants who itemize deductions on their income tax returns are entitled to deduct these taxes from their California and federal personal income tax returns annually [See I.R.C. §164(a)(1) (1970); Cal. Rev. & Tax. Code §17204(a)(1)] or only when the obligation to the state is satisfied. If it is the latter, the tax consequences on the claimant upon sale of the residential dwelling or on the estate of a deceased claimant would be a substantial one-time deduction. If it is the former, then the claimant would be in a position to take a deduction on his or her income tax return for a payment of taxes that may not actually be paid by the claimant for many years, if ever. It would seem that the intent of the legislature, in calling Chapter 1242 a tax postponement program, would be that the taxes could not be deducted until the satisfaction of the lien. The relationship between the claimant and the state, however, if viewed in the light that the underlying obligation is actually between the taxpayer and the local tax collector, could be characterized as the relationship that exists between a borrower and a lender. It would seem, therefore, that this problem would have to be solved through subsequent legislation so that the true intent of the legislature may be carried out. Nevertheless it appears that implementation of the Senior Citizens Property Tax Postponement Act of 1977, despite apparent technical problems, may provide a means to bring some relief to those senior citizen homeowners whose present fixed means cannot support the burden of spiraling property tax rates.
Taxation; Tax Reform Act of 1977—federal conformity

Revenue and Taxation Code §§13648, 13801, Chapter 7 (commencing with §14051), §§17053, 17262, 17445, 17775, 17777, 17821, 17856, 18191, 18212, 24311, 24561 (repealed); §§13648, 13649, 13801, 14051, Part 9.5 (commencing with §16700), §§17052.6, 17063.2, 17063.3, 17137.5, 17159, 17211.4, 17214.5, 17228, 17229.5, 17237, 17237.5, 17241, 17299.2, 17299.3, 17299.4, 17445, 17595, 17599, 17599.1, 17747, 17774.6, 17775, 17821, 17856, 17859.1, 17868, 18047, 18104, 18113, 18191, 18212, 18221, 18802.8, 18802.9, 19289.5, 23404, 23701t, 23704.5, 23734b, 23734c, 23740, 24353.1, 24357.6, 24357.2, 24370, 24372, 24380, 24381, 24442, 24561, 24652, 24686, 24989 (new); §§13402, 14902, 17052.5, 17059.5, 17063, 17064.5, 17072, 17122, 17138, 17139, 17154, 17202, 17203, 17207, 17209, 17211.7, 17213, 17214, 17214.2, 17216.2, 17226, 17233, 17235, 17240, 17258, 17266, 17283, 17285, 17293, 17296, 17361, 17416, 17461, 17503, 17511, 17512, 17530, 17530.1, 17530.4, 17532, 17534, 17571, 17671, 17675, 17731, 17736, 17746, 17771, 17855, 17858, 17863, 17866, 17881, 17882, 17883, 17913, 17921, 18046, 18051.1, 18052, 18090.2, 18161, 18201, 18211, 18213, 18215, 18217, 18681.1, 18807, 23701a, 23701d, 23704, 23707, 23708, 23735, 23772, 24354.2, 24357.2, 24359, 24372, 24413, 24422, 24422.5, 24434, 24514, 24562, 24662, 24949.2 (amended).

AB 302 (Brown); STATS 1977, Ch 1079

(Effective September 30, 1977)

Support: California Department of Finance; California Franchise Tax Board

The Tax Reform Act of 1977 [CAL. STATS. 1977, c. 1079, §§1-162, at — ] was enacted by the California Legislature to revise certain provisions of California’s tax law to conform with various changes in the Internal Revenue Code implemented by the Federal Tax Reform Act of 1976 [PUB. L. No. 94-455, §§1-2141, 90 Stat. 1520 (1976); CAL. STATS. 1977, c. 1079, §2, at — ]. Prior to the enactment of the Federal Tax Reform Act of 1976, most of California’s tax laws were in substantial conformity with the Internal Revenue Code, making passage of Chapter 1079 a logical response to the federal legislation [See CALIFORNIA ASSEMBLY COMMITTEE ON REVENUE AND TAXATION, A REPORT OF THE TASK FORCE ON CALIFORNIA CONFORMANCE WITH THE FEDERAL TAX REFORM ACT OF 1976, Letter of Transmittal (Jan. 1977)]. The scope of Chapter 1079 reaches essentially all taxpayers in the state, substantially conforming to the federal law in areas affecting, inter alia, individual income taxes [E.g., CAL. REV. & TAX. CODE §17052.6 (child care expenses credit against net income), §17072] (exclu-
sion of alimony payments from adjusted gross income), business deductions [E.g., CAL. REV. & TAX. CODE §17266 (business-related moving expenses), §17299.4 (foreign conventions expense allowance)], trusts [E.g., CAL. REV. & TAX. CODE §§17731, 17747 (determination of gain on an asset acquired at less than market value), §17775 (accumulation of income)], corporations [E.g., CAL. REV. & TAX. CODE §24380 (deduction for removal of architectural barriers to increase access for the handicapped), §24514 (liquidation of corporations held by parent corporation)] and homeowners' associations [CAL. REV. & TAX. CODE §23701t (tax exempt status)].

One area in particular that is affected by Chapter 1079 involves the determination of the basis of inherited property. The major change that takes place in this area is the adoption of the "carryover" basis for determining the capital gain (or loss) on property that was inherited from a decedent who dies after December 31, 1976 [See CAL. REV. & TAX. CODE §18047]. Generally, this means that the basis used in determining the gain (or loss) on the sale of inherited property is the decedent's basis in the property immediately prior to his or her death, rather than the fair market value of the property at the time of death [Compare CAL. REV. & TAX. CODE §17044 with CAL. REV. & TAX. CODE §18047]. The comparable federal change, reflected in Internal Revenue Code Section 1023, is identical. In enacting this section, however, the federal government also enacted other provisions that would offset the financial impact of this legislation on heirs and legatees or devisees [See I.R.C. §2010 (increase in the unified credit against estate tax), §2056 (increase in marital deduction)]. The failure of the California Legislature to adopt these complementary provisions [See CALIFORNIA ASSEMBLY COMMITTEE ON REVENUE AND TAXATION, A REPORT OF THE TASK FORCE ON CALIFORNIA CONFORMITY WITH THE FEDERAL TAX REFORM ACT OF 1976 at 56 (Jan. 1977)], would seem to have a disparate and especially burdensome impact on small and medium sized estates [See State Bar of California Reports, Sept., 1977, at 2]. Thus, although Chapter 1079 amends the Revenue and Taxation Code to conform substantially with the appropriate federal provisions, it would appear that by being selective as to which provisions were adopted, the state has assured itself of an increase in tax revenues [See CALIFORNIA ASSEMBLY COMMITTEE ON REVENUE AND TAXATION, A REPORT OF THE TASK FORCE ON CALIFORNIA CONFORMITY WITH THE FEDERAL TAX REFORM ACT OF 1976, Letter of Transmittal (Jan. 1977)], without providing tax relief comparable to federal law in the form of increased tax exemptions or credits [See California State Bar Reports, Sept. 1977, at 2].
Taxation; Bank and Corporation Tax Law—dissolving corporations

Revenue and Taxation Code §§23151.2, 23155, 23183.1, 23183.2 23188 (new); §§23151.1, 23181, 23183, 23186, 23201, 23202, 23204, 23224.5, 23225, 23226, 23281, 23282, 23332.5, 23364a, 23400, 25401 (amended).

AB 1751 (Chel); STATS 1977, Ch 552
(Effective September 3, 1977)
Support: Franchise Tax Board

California's Bank and Corporation Franchise Tax is a tax paid annually for the privilege of exercising a corporate franchise within the state [CAL. REV. & TAX. CODE §§23151, 23181, 23183]. When a corporation commences doing business in the state, it prepays the minimum tax provided for in Section 23151, which also serves as the basis for the tax for the year of commencement [CAL. REV. & TAX. CODE §§23151(a), 23183.1(a), 23201]. Thereafter, the franchise tax is based on the net income of the next preceding income year [CAL. REV. & TAX. CODE §§23151, 23181(a), 23183]. Prior to the enactment of Chapter 552, when a corporation or bank ceased doing business, dissolved or withdrew from the state, the tax for that year was based upon the income for that year, plus the income for the next preceding year, with a credit for the minimum tax paid during the first year of doing business [CAL. STAT. 1974, c. 311, §74, at 622; CAL STAT. 1972, c. 773, §§1, 2, at 1385-86; CAL. STAT. 1971, Ex. Sess., c. 1, §213.1, at 5051]. These provisions have been amended to provide that a corporation or bank that ceases doing business will pay the franchise tax based upon the income of the next preceding year, plus the year in which the business ceased, with no credit given for the minimum tax paid during the first year of doing business in the state [CAL. REV. & TAX. CODE §§23151.1(d), 23181(c), 23183.1(d), 23201(b)]. If a corporation dissolves or withdraws from the state, however, the tax for the year of dissolution or withdrawal will now be measured by either the income of the year in which it ceased doing business, or, if that income has previously been used as a measure of tax, the minimum tax amount. Furthermore, if a corporation commenced doing business within the state prior to January 1, 1972, a credit in the amount by which the tax paid for the first taxable year exceeded the minimum tax will be allowed [CAL. REV. & TAX. CODE §§23151.2, 23183.2, 23201]. Chapter 552 also provides that if a taxpayer under the Bank and Corporation Tax Law [CAL. REV. & TAX. CODE §§23001-26481]
has been suspended for four continuous years beginning January 1, 1975, the taxpayer is not to receive the tax credit allowed by Section 23201 [CAL. REV. & TAX. CODE §23204(b). See generally CAL. REV. & TAX. CODE §§23301-23305a (suspension and revivor)].

Under prior law, if a taxpayer that had discontinued doing business, but had not dissolved or withdrawn from the state, resumed doing business, it was possible for the taxpayer to avoid the prepayment of the tax for that year [See CAL. STATS. 1963, 1st Ex. Sess., c. 2, §4, at 5002]. Chapter 552 provides that the tax for the year in which the taxpayer resumes doing business is the greater of: (1) the tax computed upon the basis of the net income of the year in which the business ceased except if such income has already been used as a measure of tax; or (2) the minimum tax [CAL. REV. & TAX. CODE §23281]. Finally, if a taxpayer pays its taxes pursuant to any subsection of Sections 23181 or 23183.2, but should have paid it under a different subsection, the amount paid will be credited as if paid under the proper subsection as of the date the actual payment was made [CAL. REV. & TAX. CODE §23188]. Thus, Chapter 552 would seem to clarify the Bank and Corporation Tax Law relating to taxes on corporations that cease doing business, dissolve or withdraw from the state.

See Generally:

Taxation; jeopardy determination hearings

Revenue and Taxation Code §§6538.5, 7700.5, 8828.5, 30243.5, 32313 (new).
AB 659 (Chel); STATS 1977, Ch 329
Support: State of California Board of Equalization

Chapter 329 has been enacted to provide for presale administrative hearings for taxpayers whose property has been seized pursuant to a jeopardy determination of the Franchise Tax Board made under the authority of the Sales and Use Tax Law [CAL. REV. & TAX. CODE §§6001-7176], the Motor Fuel License Tax Law [CAL. REV. & TAX. CODE §§7301-8404], the Use Fuel Tax Law [CAL. REV. & TAX. CODE §§8601-9355], the Cigarette Tax Law [CAL. REV. & TAX. CODE §§30001-30479], or the Alcoholic Beverage Tax Law [CAL. REV. & TAX CODE §§32001-32556]. A jeopardy determination is made when the Franchise Tax Board believes that a delay in collecting taxes would jeopardize their collection, and results in the determined amounts becoming immediately due and payable [CAL. REV. & TAX. CODE §§6536, 7698, 8826, 30241, 32311]. If the amounts so determined are not
paid, or the taxpayer does not institute proceedings to stay seizure and sale within ten days of notice of the jeopardy determination, then the amount determined becomes final and collection proceedings are instituted by the Franchise Tax Board [CAL. REV. & TAX. CODE §§6537, 7699, 8827, 30242, 32311].

Prior to the enactment of Chapter 329, a taxpayer could obtain a hearing on a jeopardy determination only if a petition for a hearing was filed and the required security was deposited within the ten day period following notice of the jeopardy determination [See, e.g., CAL. STATS. 1959, c. 1040, §1, at 3071; CAL. STATS. 1941, c. 36, §1, at 546-47].

A similar provision of the Revenue and Taxation Code was recently examined by the California Supreme Court in the case of Dupuy v. Superior Court [15 Cal. 3d 410, 541 P.2d 540, 124 Cal. Rptr. 900 (1975)] in which the court held that the seizure of a taxpayer’s property pursuant to a jeopardy determination was not violative of the taxpayer’s right of due process, but that the sale of seized property without an administrative hearing was violative of this constitutional right [Id. at 415, 541 P.2d at 543-44, 124 Cal. Rptr. at 903-04]. The court distinguished the strong state interest in requiring the posting of a bond or security prior to a preseizure administrative hearing, from that interest served by a presale hearing [Id. at 416-17, 541 P.2d at 544-45, 124 Cal. Rptr. at 904-05]. Since it was conceivable, the court reasoned, that a taxpayer could purposely dissipate his or her assets to preclude the government from collecting the taxes owed, there was a strong state interest in requiring a security deposit before granting a preseizure hearing [Id. at 416, 541 P.2d at 544, 124 Cal. Rptr. at 904]. In contrast, the court stated that “no legitimate government function is served by . . . [the] requirement [of posting a bond] with respect to staying a sale of the property, because the seizure . . . has effectively prevented the taxpayer from defeating collection of the tax” [Id. at 417, 541 P.2d at 544, 124 Cal. Rptr. at 904].

Chapter 329 has apparently been enacted in response to the decision in Dupuy and provides that taxpayers who file an application for a hearing within 30 days after notice of a jeopardy determination will stay the sale of their seized property [CAL. REV. & TAX. CODE §§6538.5, 7700.5, 8828.5, 30243.5, 32313]. Chapter 329 further indicates that security deposits are no longer required to stay the sale of seized property, but states that without deposit of the required security within ten days of receipt of the notice, the filing of the application for a presale hearing will not stay the seizure of the property or the date on which the determination becomes final [CAL. REV. & TAX. CODE §§6538.5, 7700.5, 8828.5, 30243.5, 32313]. Finally, Chapter 329 provides that the taxpayer may apply for an administrative hearing for any of the following purposes: (1) to establish that the determination was
Taxation

excessive; (2) to establish that the sale would result in irreparable harm to the taxpayer; (3) to request release of all or part of the property seized; or (4) to request a stay of collection activities [CAL. REV. & TAX. CODE §§6538.5(a)-(d), 7700.5(a)-(d), 8828.5(a)-(d), 30243.5(a)-(d), 32313.5(a)-(d)]. Thus, it would appear that in providing for presale administrative hearings for taxpayers aggrieved by a jeopardy determination, and disposing of the requirement of posting a deposit therefor, Chapter 329 satisfies the due process requirements set forth in Dupuy.

See Generally:

Taxation; inheritance tax—transfers in trust

Revenue and Taxation Code §13694 (amended).
SB 543 (Holmdahl); Stats 1977, Ch 694 (Effective September 8, 1977)
Support: State Bar of California

Pursuant to Section 13694(a) of the Revenue and Taxation Code, all transfers of property coupled with either a general or limited power of appointment are subject to the state inheritance tax imposed by Section 13401 of the Revenue and Taxation Code. Such transfers made subject to a power of appointment are taxed in the estate of the donor as if the property passed to the donee, rather than to the beneficiaries who actually received the property upon the donee’s exercise of the power [See Continuing Education of the Bar, California Inheritance Tax Practice §5.43 (1973)]. An exception to this provision is made when a trust is created granting a trustee the power to make discretionary payments of income or principal for the benefit of a trust beneficiary other than the trustee [CAL. REV. & TAX. CODE §13694]. In such cases, the inheritance tax is computed on the basis of a transfer of the property to the beneficiaries of the trust, rather than to the trustee as is the case when a power of appointment is created [See Continuing Education of the Bar, California Inheritance Tax Practice §5.41 (1973)]. The effect of this exception would seem to be a reduction of the tax rate in those situations in which the trustee is of a more remote relationship to the trustor than is the beneficiary, since the inheritance tax exemption and tax rate are based upon the proximity of the relationship between the transferee and the decedent; the closer the relationship, the larger the exemption and the smaller the tax rate [See 5 B. Witkin, Summary of California Law, Taxation §236 (8th ed. 1974);
Prior to the enactment of Chapter 694, however, there apparently existed some uncertainty as to the application of the exception provided by Section 13694(a) when a decedent established a trust giving the trustee absolute discretion in making distributions of principal or income, or in terminating the trust [STATE BAR OF CALIFORNIA, COMM. ON PROBATE AND TRUST LAW, INTERIM REPORT at 1 (November 2, 1976)]. In such cases, the State Controller apparently was taking the position that the exception provided by Section 13694(b) was not applicable and that a power of appointment was being created by this type of property transfer to a trustee [See id.]. Chapter 694 clarifies this issue by now specifying that "even though the discretion of the trustee is absolute and includes the power to terminate the trust" a trust granting to the trustee the power to make discretionary payments of income or principal to or for a trust beneficiary other than a trustee is not a power of appointment for inheritance tax purposes [CAL. REV. & TAX. CODE §13694(b)]. Thus, besides ensuring a lower tax rate in those situations in which the trustee is of a more remote relationship to the trustor than the beneficiary, the effect of Chapter 694 will apparently be to conform the Revenue and Taxation Code with the general law of trusts, since a trust that gives the trustee the power to make discretionary payments and to terminate the trust should not be construed to create a power of appointment [See W. SCOTT, LAW OF TRUSTS 905, 2644 (3d ed. 1967)].

See Generally:

Selected 1977 California Legislation