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SB-909 Property tax postponement: special needs trust claimants. (2015-2016)

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Senate Bill No. 909

CHAPTER 425

An act to amend Section 20583 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 21, 2016. Filed with Secretary of State September 21, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 909, Beall. Property tax postponement: special needs trust claimants.

Existing law authorizes the Controller, upon approval of a claim for the postponement of ad valorem property taxes, to directly pay a county tax collector for the property taxes owed by the claimant, as provided. Existing law requires all sums paid for the postponement of property taxes pursuant to these provisions to be secured by a lien in favor of the state. Amounts owed by a claimant are due if the claimant, or his or her surviving spouse, ceases to occupy the premises as his or her residential dwelling, dies, disposes of the property, or allows specified taxes and special assessments to become delinquent, as provided. Existing law requires that the residential dwelling be owned by the claimant, the claimant and spouse, or the claimant and another specified individual. Existing law requires a claimant to file a claim containing specified information, including a description of the residential dwelling, under penalty of perjury.

This bill would provide that "owned" for these purposes includes the interest of a beneficiary of a special needs trust.

This bill would incorporate additional changes to Section 20583 of the Revenue and Taxation Code proposed by AB 1952 that would become operative if both bills are enacted and this bill is enacted last.

By requiring a special needs trust claimant for property tax postponement to file certain information under penalty of perjury, thereby expanding the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 20583 of the Revenue and Taxation Code is amended to read:

20583. (a) "Residential dwelling" means a dwelling occupied as the principal place of residence of the claimant and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, owned by the claimant, the claimant and spouse, or by the claimant and either another individual eligible for postponement under this chapter or an individual described in

subdivision (a), (b), or (c) of Section 20511 and located in this state. It shall include condominiums that are assessed as realty for local property tax purposes. It also includes part of a multidwelling or multipurpose building and a part of the land upon which it is built.

(b) As used in this chapter in reference to ownership interests in residential dwellings, "owned" includes (1) the interest of a vendee in possession under a land sale contract provided that the contract or memorandum thereof is recorded and only from the date of recordation of the contract or memorandum thereof in the office of the county recorder where the residential dwelling is located, (2) the interest of the holder of a life estate provided that the instrument creating the life estate is recorded and only from the date of recordation of the instrument creating the life estate in the office of the county recorder where the residential dwelling is located, but "owned" does not include the interest of the holder of any remainder interest or the holder of a reversionary interest in the residential dwelling, (3) the interest of a joint tenant or a tenant in common in the residential dwelling or the interest of a tenant where title is held in tenancy by the entirety or a community property interest where title is held as community property, and (4) the interest, including the interest of a beneficiary of a special needs trust, in the residential dwelling in which the title is held in trust, as described in subdivision (d) of Section 62, provided that the Controller determines that the state's interest is adequately protected.

(c) Except as provided in subdivision (c), and Chapter 3 (commencing with Section 20625), ownership must be evidenced by an instrument duly recorded in the office of the county where the residential dwelling is located.

(d) "Residential dwelling" does not include any of the following:

(1) Any residential dwelling in which the owners do not have an equity of at least 40 percent of the full value of the property as determined for purposes of property taxation or at least 40 percent of the fair market value as determined by the Controller and where the Controller determines that the state's interest is adequately protected. The 40-percent equity requirement shall be met each time the claimant or authorized agent files a postponement claim.

(2) Any residential dwelling in which the claimant's interest is held pursuant to a contract of sale or under a life estate, unless the claimant obtains the written consent of the vendor under the contract of sale, or the holder of the reversionary interest upon termination of the life estate, for the postponement of taxes and the creation of a lien on the real property in favor of the state for amounts postponed pursuant to this act.

(3) Any residential dwelling on which the claimant does not receive a secured tax bill.

(4) Any residential dwelling in which the claimant's interest is held as a possessory interest, except as provided in Chapter 3.5 (commencing with Section 20640).

SEC. 1.5. Section 20583 of the Revenue and Taxation Code is amended to read:

20583. (a) "Residential dwelling" means a dwelling occupied as the principal place of residence of the claimant and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, owned by the claimant, the claimant and spouse, or by the claimant and either another individual eligible for postponement under this chapter or an individual described in subdivision (a), (b), or (c) of Section 20511 and located in this state. It shall include condominiums that are assessed as realty for local property tax purposes. It also includes part of a multidwelling or multipurpose building and a part of the land upon which it is built.

(b) As used in this chapter in reference to ownership interests in residential dwellings, "owned" includes (1) the interest of a vendee in possession under a land sale contract provided that the contract or memorandum thereof is recorded and only from the date of recordation of the contract or memorandum thereof in the office of the county recorder where the residential dwelling is located, (2) the interest of the holder of a life estate provided that the instrument creating the life estate is recorded and only from the date of recordation of the instrument creating the life estate in the office of the county recorder where the residential dwelling is located, but "owned" does not include the interest of the holder of any remainder interest or the holder of a reversionary interest in the residential dwelling, (3) the interest of a joint tenant or a tenant in common in the residential dwelling or the interest of a tenant where title is held in tenancy by the entirety or a community property interest where title is held as community property, and (4) the interest, including the interest of a beneficiary of a special needs trust, in the residential dwelling in which the title is held in trust, as described in subdivision (d) of Section 62, provided that the Controller determines that the state's interest is adequately protected.

(c) Except as provided in subdivision (c), and Chapter 3 (commencing with Section 20625), ownership must be evidenced by an instrument duly recorded in the office of the county where the residential dwelling is located.

(d) "Residential dwelling" does not include any of the following:

(1) Any residential dwelling in which the owners do not have an equity of at least 40 percent of the full value of the property as determined for purposes of property taxation or at least 40 percent of the fair market value as determined by the Controller and

where the Controller determines that the state's interest is adequately protected. The 40-percent equity requirement shall be met each time the claimant or authorized agent files a postponement claim.

(2) Any residential dwelling in which the claimant's interest is held pursuant to a contract of sale or under a life estate, unless the claimant obtains the written consent of the vendor under the contract of sale, or the holder of the reversionary interest upon termination of the life estate, for the postponement of taxes and the creation of a lien on the real property in favor of the state for amounts postponed pursuant to this act.

(3) Any residential dwelling on which the claimant does not receive a secured tax bill.

(4) Any residential dwelling in which the claimant's interest is held as a possessory interest, except as provided in Chapter 3.5 (commencing with Section 20640).

(5) Any residential dwelling that is subject to a Property Assessed Clean Energy bond, or PACE bond, as defined in Section 26054 of the Public Resources Code.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 20583 of the Revenue and Taxation Code proposed by both this bill and Assembly Bill 1952. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 20583 of the Revenue and Taxation Code, and (3) this bill is enacted after Assembly Bill 1952, in which case Section 1 of this bill shall not become operative.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.