

Assembly Bill No. 1090

CHAPTER 369

An act to amend Section 53684 of the Government Code, and to add Part 10.6 (commencing with Section 20800) to Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 30, 2011. Filed with
Secretary of State September 30, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1090, Blumenfield. Taxation: property tax deferral.

The Senior Citizens and Disabled Citizens Property Tax Postponement Law, until February 20, 2009, authorized a claimant, as defined, to file a claim with the Controller to postpone the payment of ad valorem property taxes, where household income, as defined, did not exceed specified amounts. Existing law authorized the Controller, upon approval of the claim, to either make payment directly to specified entities, or to issue the claimant a certificate of eligibility that constituted a written promise of the state to pay the amount specified on the certificate, as provided. Existing law required these payments to be made out of specified funds appropriated to the Controller, as specified, and also required repaid property tax postponement payments to be transferred, as specified, to the General Fund.

Existing law, on and after February 20, 2009, prohibits a person from filing a claim for postponement, and prohibits the Controller from accepting applications for postponement, under the Senior Citizens and Disabled Citizens Property Tax Postponement Law.

This bill would establish the County Deferred Property Tax Program for Senior Citizens and Disabled Citizens, authorize a county to elect to participate in the program by adopting a resolution indicating the county's intention to participate in and administer the program, and specify that the requirements of a county or county officials set forth in the bill are conditioned upon the county's passage of the above-described resolution. Under the program, a participating county would be authorized to defer a claimant's property taxes retroactively, for property taxes due on or before February 20, 2011, and prospectively, as specified.

This bill would require a claimant, as defined, to use the application form of a county to initiate participation in the program. The bill would authorize the county treasurer or county tax collector to review the claimant's application for program participation, as specified, and, if the claimant is eligible, and if there are sufficient funds within the county's Property Tax Deferral Fund, which this bill would require a participating county to establish within its treasury, to (1) defer property taxes on the claimant's residential dwelling for that fiscal year, (2) issue a subvention payment to

that county, in an amount equivalent to the amount of the deferred property taxes, from the county's Property Tax Deferral Fund, (3) direct the county auditor to apportion that subvention payment in the same manner as if the property taxes had been paid, and (4) provide a letter or other written notice to the claimant, noting the relevant fiscal year of participation, for use as written confirmation of participation. The bill would authorize the county treasurer of a participating county, if he or she makes a specified determination, upon the adoption of a specified resolution by that county's board of supervisors, to deposit specified funds in the county treasury for the purpose of investment of those funds in the county's Property Tax Deferral Fund.

This bill would require the amount of property taxes deferred, plus any interest accrued thereon, to be secured by a judgment lien, as specified. The bill would also require the lien to be evidenced by a notice of lien, and various county officials to process and record the notice of lien, as specified. The bill would require a participating county to charge a claimant a specified adjusted rate of interest on the amount owed for the deferment of property taxes. The bill would require the amount secured by the lien to be increased to reflect the accrual of interest on the property taxes deferred, or decreased by the amount of any payment made to reduce the amount secured by the lien, as specified. The bill would provide procedures for the release of the lien if the obligation is paid in full or otherwise discharged, and would require all amounts owed by a claimant under the program to become due immediately under specified circumstances.

This bill would authorize a participating county to charge an application fee to the claimant to offset the actual costs of administering the program, and would require the fee proceeds to be deposited in an account within the county's Property Tax Deferral Fund, to be used exclusively for those administrative costs. The bill would require the letter or other written confirmation of participation in the program provided by the county to be considered as evidence of program participation.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Since 1977, the Senior Citizens and Disabled Citizens Property Tax Postponement Law has helped eligible elderly and disabled residents on fixed incomes remain in their homes by deferring payment of property taxes until the house is sold or ownership otherwise transferred.

(b) Suspension of the Senior Citizens and Disabled Citizens Property Tax Postponement Law in February 2009 has exposed participants to possible default on property taxes in December 2009 and thereafter, and has heightened fears of home foreclosures.

(c) While counties may not force the sale of a home to collect on delinquent property taxes for five years, no similar delay applies to lenders that would protect the elderly and disabled who would have participated in

the property tax deferral program established pursuant to the Senior Citizens and Disabled Citizens Property Tax Postponement Law had it not been suspended.

SEC. 2. Section 53684 of the Government Code is amended to read:

53684. (a) Unless otherwise provided by law, if the treasurer of any local agency, or other official responsible for the funds of the local agency, determines that the local agency has excess funds which are not required for immediate use, the treasurer or other official may, upon the adoption of a resolution by the legislative or governing body of the local agency authorizing the investment of funds pursuant to this section and with the consent of the county treasurer, deposit the excess funds in the county treasury for the purpose of investment by the county treasurer pursuant to Section 53601 or 53635, or Section 20822 of the Revenue and Taxation Code.

(b) The county treasurer shall, at least quarterly, apportion any interest or other increment derived from the investment of funds pursuant to this section in an amount proportionate to the average daily balance of the amounts deposited by the local agency and to the total average daily balance of deposits in the investment pool. In apportioning and distributing that interest or increment, the county treasurer may use the cash method, the accrual method, or any other method in accordance with generally accepted accounting principles.

Prior to distributing that interest or increment, the county treasurer may deduct the actual costs incurred by the county in administering this section in proportion to the average daily balance of the amounts deposited by the local agency and to the total average daily balance of deposits in the investment pool.

(c) The county treasurer shall disclose to each local agency that invests funds pursuant to this section the method of accounting used, whether cash, accrual, or other, and shall notify each local agency of any proposed changes in the accounting method at least 30 days prior to the date on which the proposed changes take effect.

(d) The treasurer or other official responsible for the funds of the local agency may withdraw the funds of the local agency pursuant to the procedure specified in Section 27136.

(e) Any moneys deposited in the county treasury for investment pursuant to this section are not subject to impoundment or seizure by any county official or agency while the funds are so deposited.

(f) This section is not operative in any county until the board of supervisors of the county, by majority vote, adopts a resolution making this section operative in the county.

(g) It is the intent of the Legislature in enacting this section to provide an alternative procedure to Section 51301 for local agencies to deposit money in the county treasury for investment purposes. Nothing in this section shall, therefore, be construed as a limitation on the authority of a county and a city to contract for the county treasurer to perform treasury functions for a city pursuant to Section 51301.

SEC. 3. Part 10.6 (commencing with Section 20800) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 10.6. COUNTY DEFERRED PROPERTY TAX PROGRAM FOR SENIOR CITIZENS AND DISABLED CITIZENS

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

20800. This part shall be known and may be cited as the County Deferred Property Tax Program for Senior Citizens and Disabled Citizens.

20801. Unless the context requires otherwise, the definitions set forth in this chapter shall govern the construction of this part.

20802. (a) "Claimant" means an owner of a residential dwelling, as defined in Section 20808, who applies to a participating county for deferment of property taxes pursuant to this chapter and meets all of the following requirements:

(1) Has an annual household income, as defined in subdivision (a) of Section 20803, that does not exceed thirty-five thousand five hundred dollars (\$35,500).

(2) (A) Has attained eligibility for full social security benefits as of the last day of the filing period for that fiscal year, or (B) is blind or disabled, as defined in Section 12050 of the Welfare and Institutions Code, except in the case of retroactive deferment, as provided for in Section 20810, in which the age eligibility shall be 62 years old.

(3) Has equity value of at least 20 percent. For purposes of this subdivision, "equity value" means the amount by which the fair market value of the residential dwelling exceeds the total amount of any liens or other obligations against the residential dwelling. A participating county may require a claimant to provide an appraisal by a licensed or certified appraiser in support of his or her application. If an alternate appraisal method is used, a claimant whose application is denied for insufficient equity, may provide an appraisal by a licensed or certified appraiser in support of his or her application for consideration by the county.

(b) Only one claimant per residential dwelling may have property taxes deferred under this chapter at any one time.

(c) A claimant shall apply to participate in the program in each year that he or she seeks to defer property taxes under the program.

(d) The county treasurer, or county tax collector, may require a claimant to furnish evidence of the claimant's ongoing eligibility in order to continue participation in the program in a subsequent year.

(e) If the claimant fails or refuses to furnish any information requested in writing by the county pursuant to this chapter, or files a fraudulent claim for deferment under this chapter, the claimant's application to defer property taxes under this chapter shall be null and void, any record of a deferment payment on the tax roll shall be canceled, the tax or assessment shall be a lien as though no payment had been made, and the amount of the lien shall

be increased by any penalties or interest resultant from property tax delinquency.

20803. (a) “Household income” means all income, as defined in subdivision (b), received by any member of a household while that member is or was a member of that household.

(b) “Income” means adjusted gross income, as defined in Section 17072, plus all of the following cash items:

(1) Amounts contributed on behalf of the contributor to a tax-sheltered retirement plan or deferred compensation plan.

(2) Annual winnings from the California Lottery in excess of six hundred dollars (\$600) in the current calendar year.

(3) Exempt interest received from any source.

(4) Gifts and inheritances in excess of three hundred dollars (\$300), other than transfers between members of the household. Gifts and inheritances shall include noncash items.

(5) Life insurance proceeds to the extent that the proceeds exceed the expenses incurred for the last illness and funeral of the deceased spouse of the claimant. “Expenses incurred for the last illness” shall include unreimbursed expenses paid or incurred during the income calendar year and any expenses paid or incurred thereafter up until the day the claim is filed. For purposes of this paragraph, funeral expenses shall not exceed five thousand dollars (\$5,000).

(6) Nontaxable amount of any pensions and annuities.

(7) Nontaxable gain from the sale of a residence, as defined in Section 121 of the Internal Revenue Code.

(8) Nontaxable military compensation as defined in Section 112 of the Internal Revenue Code.

(9) Nontaxable scholarship and fellowship grants as defined in Section 117 of the Internal Revenue Code.

(10) Public assistance and relief.

(11) Railroad retirement benefits.

(12) Sick leave payments.

(13) Social Security benefits (not including Medicare benefits).

(14) Temporary workers’ compensation payments.

(15) Unemployment insurance payments.

(16) Veterans’ benefits.

(17) If an alternative minimum tax is required to be paid pursuant to Chapter 2.1 (commencing with Section 17062) of Part 10, the amount of the alternative minimum taxable income, regardless of whether or not that amount is held in cash, in excess of the regular taxable income otherwise applicable.

(c) Net business loss, net rental loss, net capital loss, or other net losses, amounts deducted for depreciation, or other noncash expenses shall not be deducted in calculating adjusted gross income for purposes of this section.

(d) For purposes of this chapter, income shall be determined for the calendar year immediately preceding the fiscal year for which deferment is claimed pursuant to this chapter.

20804. (a) “Owner of a residential dwelling” includes all of the following:

(1) An individual with an ownership interest of a vendee, who is in possession of the residential dwelling 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 of a participating county in which the residential dwelling is located.

(2) An individual with an ownership interest of a holder of a life estate in the residential dwelling, provided that the instrument creating the life estate is recorded, and only from the date of recordation of that instrument in the office of the county recorder of a participating county in which the residential dwelling is located.

(3) If the residential dwelling is located within a participating county, an individual with a joint-tenant or tenant-in-common ownership interest in the residential dwelling, or the interest of a tenant where title is held in tenancy by the entirety or as community property.

(4) An individual with an ownership interest in the residential dwelling and the title to the residential dwelling, located within a participating county, is held in trust.

(5) For purposes of this chapter, an individual who is the registered owner of a mobilehome attached to a permanent foundation and assessed as real property.

(b) An ownership interest described in subdivision (a) shall be required to be evidenced by a duly recorded instrument in the office of the county recorder of a participating county in which the residential dwelling is located.

20805. “Participating county” means a county that makes an election described in Section 20810.

20806. “Program” means the County Deferred Property Tax Program for Senior Citizens and Disabled Citizens.

20807. “Property taxes” means ad valorem property taxes or special assessments imposed upon a residential dwelling within the year in which deferment is sought.

20808. (a) (1) “Residential dwelling” means a dwelling, and the land surrounding that dwelling as is reasonably necessary for the use of the dwelling as a home, occupied by the claimant as his or her principal place of residence, and owned by any of the following:

(A) The claimant.

(B) The claimant and the claimant’s spouse.

(C) The claimant and his or her parents, children (whether natural or adopted), or grandchildren of either the claimant or the claimant’s spouse.

(D) The claimant and the spouse of any parent, child (whether natural or adopted), or grandchild of either the claimant or the claimant’s spouse.

(E) The claimant and another individual who resides in this state and is eligible for deferment under this chapter.

(2) “Residential dwelling” shall also include all of the following:

(A) A condominium that is assessed as real property for local property tax purposes.

(B) A portion of a multidwelling or multipurpose building and the portion of land upon which it is built.

(C) A mobilehome that is permanently attached to a permanent foundation and assessed as real property for local property tax purposes.

(b) “Residential dwelling” shall not include any of the following:

(1) Any dwelling in which the claimant does not have an equity value of 20 percent, as described in paragraph (3) of subdivision (a) of Section 20802.

(2) Any dwelling in which the claimant’s interest is a life estate or is held pursuant to a contract of sale, unless the claimant obtains the written consent of the holder of the reversionary interest subject to the life estate, or the vendor under the contract of sale, for the claimant to participate in the program with respect to the dwelling.

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

(4) Any dwelling in which the claimant’s interest is held as a possessory interest, except a life estate as described in paragraph (2).

(5) Any houseboat or floating home.

CHAPTER 2. DEFERMENT

20810. A county may elect to participate in the County Deferred Property Tax Program for Senior Citizens and Disabled Citizens by adopting a resolution indicating the county’s intention to participate in and to administer the program. All requirements of a county or county officials set forth in this chapter are conditioned upon the county’s adoption of this resolution. Under this program, a participating county may defer a claimant’s property taxes retroactively, for property taxes due on or before February 20, 2011, and prospectively, as provided in this part.

20811. (a) A claimant shall use the application form of a county to initiate participation in the program pursuant to Section 20810.

(b) Upon a participating county’s receipt of a claim for property tax deferment under the program, submitted within the filing period specified in Section 20812, the county treasurer or county tax collector shall review the claimant’s application for program eligibility, consistent with the requirements specified in Section 20802.

(c) If the claimant is eligible to participate in the program, and if there are sufficient funds within the county’s Property Tax Deferral Fund, established pursuant to Section 20822, to defer property taxes on the claimant’s residential dwelling for that fiscal year, the county treasurer or county tax collector, may do all of the following:

(1) Defer the property taxes due on the claimant’s residential dwelling and owing for that fiscal year.

(2) Issue a subvention payment, equivalent to the amount of the deferred property taxes, from the county's Property Tax Deferral Fund to the county to be processed in the same manner as all other property tax payments.

(3) Direct the county auditor to apportion that subvention payment in the same manner as if the property taxes had been paid.

(4) Provide a letter or other written confirmation to the claimant, noting the relevant fiscal year of participation, for use as written confirmation of program participation.

(d) If the claimant's property taxes are deferred under the program, the participating county shall not charge the claimant any penalties, or undertake any collections actions with respect to taxes deferred under this chapter.

(e) (1) The amount of property taxes deferred, plus any interest accrued thereon, shall be secured by a judgment lien, against the claimant's residential dwelling for which the property taxes are deferred.

(2) In the case of a residential dwelling that is part of a larger parcel taxed as a unit, including, but not limited to, a duplex, farm, or multidwelling or multipurpose building, the lien shall be against the entire tax parcel.

(f) The lien shall be evidenced by a notice of lien for deferred property taxes executed by the county, and shall secure all sums deferred and owing under this chapter, including amounts deferred subsequent to the initial deferment. The notice of lien shall include, but not be limited to, all of the following:

(1) The names of all record owners of the real property for which the county has deferred property taxes under the program.

(2) A description of the real property for which property taxes have been deferred.

(g) The county recorder shall index the lien according to the names of each record owner and the county.

20812. (a) The filing period for a claimant to apply to a participating county for deferment under the program shall be from October 1 to December 10 of each year.

(b) A participating county may require any information necessary to process the claimant's application for deferment under the program, whether through the county's application form or forms or otherwise.

(c) Any form filed by a claimant under this chapter shall not be under oath, but shall contain, or be verified by, a written declaration that the information therein was provided under the penalty of perjury.

(d) All forms supplied to the claimant shall include a statement of the interest rate that will apply to the property taxes deferred under the program.

(e) A county may grant a reasonable extension for filing a claim if it determines that good cause for the extension exists. However, no extension shall be granted beyond the termination of the fiscal year for which deferment is requested.

20813. (a) Upon receipt of a notice of lien for deferred property taxes from the county treasurer, the county assessor, or county tax collector shall immediately do all of the following:

(1) Enter on the notice of lien a description of the real property for which the taxes have been deferred.

(2) Enter on the notice of lien the names of all record owners of the real property, as disclosed by the county assessor's records.

(3) Enter on the assessment records applicable to the property, the fact that the taxes on the property have been deferred.

(b) Upon entry of the information required by subdivision (a), the county assessor shall immediately forward the notice of lien to the county recorder, who shall record the notice of lien.

(c) When the record reveals a change in the ownership status of the real property subsequent to the date of entry of the deferral information thereon, the county assessor shall notify the county treasurer or county tax collector, as appropriate, of the change in the ownership status in the manner prescribed by the county treasurer or county tax collector.

20814. (a) A participating county shall reduce the amount secured by the lien provided for in subdivision (e) of Section 20811 by the amount of any payment received for that purpose. Payments shall be applied to the oldest deferral amount in order of lien recordation date until paid in full.

(b) A participating county shall increase the amount secured by that lien to reflect the accrual of interest on the property taxes deferred, or any subsequent deferral of property taxes made with respect to that residential dwelling pursuant to a claim of that claimant.

(c) A participating county shall annually adjust the lien as described in this section.

20815. If at any time the amount of the obligation secured by the lien for deferred property taxes is paid in full or is otherwise discharged, the county treasurer or county tax collector shall do all of the following:

(a) Execute and cause to be recorded by the county recorder a release of the associated lien conclusively evidencing the satisfaction of all amounts secured by the lien. The cost of recording the release of the lien shall be added to, and become part of the obligation secured by, the lien being released.

(b) Direct the county tax collector, or other appropriate county official, to remove from the secured roll the information required to be entered thereon by paragraph (1) of subdivision (a) of Section 2514 with respect to the real property described in the lien.

(c) Direct the county tax collector, or other appropriate county official, to remove the information required to be entered into the county assessment records by Section 2515 from the assessment records applicable to the real property described in the lien.

20816. (a) If property taxes are deferred for a claimant and that claimant subsequently dies, all amounts owed by that claimant pursuant to this chapter shall become due as of the end of the next application period, unless another eligible claimant for the same residential dwelling successfully applies to the county for deferment pursuant to this chapter for the next fiscal year.

(b) All amounts owed by the claimant pursuant to this chapter shall become due immediately if any of the following occurs:

(1) The claimant ceases to own the residential dwelling by sale, conveyance, or condemnation.

(2) The claimant ceases to reside permanently at the residential dwelling.

(3) The claimant's equity in the residential dwelling falls below the amount necessary to be eligible to participate in the program, as provided by paragraph (3) of subdivision (a) of Section 20802 and subdivision (b) of Section 20808.

(4) The claimant refinances an existing mortgage or deed of trust on the residential dwelling causing his or her equity value in the residential dwelling to decline by 5 percent or more.

(5) Deferment was granted erroneously because eligibility requirements were not actually met.

20817. (a) The county treasurer or county tax collector shall maintain a record of all residential dwellings against which a notice of lien for deferred property taxes has been recorded pursuant to this chapter. With respect to each residential dwelling, the record shall include, but not be limited to, the name of the claimant, a description of the real property against which the lien is recorded, the identification number of the notice of lien or book and page number of the recording, and the amount of the lien.

(b) Information and records of the program not required to be disclosed shall be maintained in the same manner as described in Section 408.

CHAPTER 3. FINANCING

20820. A participating county may charge an application fee from a claimant upon that claimant's submission of an application form to participate in the program, consistent with Section 54985 of the Government Code. The application fees derived from all claimants in a participating county shall be used to offset that county's costs incurred in administering the program. The proceeds of the fee shall be deposited in an account within the Property Tax Deferral Fund, established by Section 20822, to be used exclusively to pay those administrative costs.

20821. (a) A participating county shall charge claimants interest on the amount of property taxes deferred pursuant to this part. The effective annual interest rate shall be 7 percent, or the effective annual yield earned in the prior fiscal year by the Pooled Money Investment Account plus 2 percent, whichever is higher, rounded to the nearest full percent.

(b) The interest rate provided for by subdivision (a) shall be applied as of the first day of the month in which a deferment payment is made pursuant to this chapter and every day of the month thereafter until the lien is discharged. In the event that any payment is applied, in any month, to reduce the amount owed under the lien, the interest rate shall be applied to the balance of the amount owed beginning on the first day of the following month.

(c) In computing interest in accordance with this section, fractions of a cent shall be disregarded.

20822. Each participating county shall establish a Property Tax Deferral Fund within its treasury. Expenditures from this fund shall be for the sole purposes of making property tax deferment subvention payments pursuant to subdivision (c) of Section 20811 and offsetting the county's administrative costs, as described in Section 20820.

20823. (a) The deferment of property taxes pursuant to this chapter shall not affect the obligation of a borrower to continue to make payments to a lender with respect to an impound account, trust, or other type of account described in Section 2954 of the Civil Code which was established prior to the effective date of the act that added this section.

(b) (1) No lender shall require a borrower to maintain an impound, trust, or other similar type of account with regard to property taxes once the borrower has deferred these taxes pursuant to this chapter and submits to the lender evidence of tax deferment under this part, except in the following circumstances:

(A) Federal law, regulation, rule, or program requires the borrower to maintain an impound, trust, or other similar type of account with regard to property taxes.

(B) The borrower is required to make payments to a lender using the type of account described in Section 2954 of the Civil Code for a loan that is made, guaranteed, or insured by a federal government lending or insuring agency.

(C) The prohibition would impair the express obligations of a loan agreement.

(2) If not previously used in payment or partial payment of property taxes, any payment made by a borrower to an impound, trust, or other similar type of account prior to the time of submission of evidence of tax deferment pursuant to this part shall be refunded to the borrower within 30 days thereafter.

(c) No lender or other person authorized to take sale on real property shall file a notice of default based solely on a borrower's failure to pay property taxes if the borrower provides evidence of participation in the property tax deferment program established pursuant to this part. A borrower who is a claimant shall provide evidence of participation to each lender upon a participating county's approval of the claimant's application to participate in the program.

(d) A letter or other written confirmation from the county identifying an individual as a participant in the program, provided pursuant to paragraph (4) of subdivision (c) of Section 20811, shall be considered as evidence of participation for purposes of this section.

20824. If the deferment claim is filed timely, then any delinquent penalties and interest for that fiscal year shall be canceled unless the failure to perfect the claim was due to willful neglect on the part of the claimant or his or her representative. In the event of such willful neglect, any property tax deferment subvention payment may be used only if it is accompanied by sufficient amounts to pay the delinquent interest and penalties.

20825. If a property tax deferment repayment is made to satisfy an obligation secured by a lien for property tax deferment, and the repayment exceeds the amount owed to the participating county under the lien, the county shall refund the overpayment to the party entitled thereto.