



## Legislative Fiscal Bureau

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TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Substitute Amendment 1 to Assembly Bill 159: Property Tax Collection

Assembly Bill 159 (AB 159) makes two changes to the property tax collection statutes. First, the bill would change how local governments are responsible for unpaid personal property taxes. Second, the bill seeks to require municipalities to share omitted taxes with the municipality's overlying taxing jurisdictions. Both of the changes would take effect with property tax assessments as of January 1, 2010.

AB 159 was introduced on March 13, 2009, and was referred to the Assembly Committee on Urban and Local Affairs. After a June 2, 2009, public hearing on the bill, the Committee introduced Assembly Substitute Amendment 1 (ASA 1) to AB 159 on August 25, 2009, and recommended the substitute amendment for passage by a vote of 7 to 0. The bill was referred to the Joint Committee on Finance on September 8, 2009. ASA 1 to AB 159 is before the Committee, and this analysis summarizes the substitute amendment.

### **CURRENT LAW**

Omitted Property. Under current law, municipalities retain all amounts collected as omitted taxes. Omitted taxes occur when a municipality discovers that it failed to tax a property in a prior year. For example, a property owner may build an addition to his or her property and not obtain a building permit informing the municipality of the improvement. If the municipality discovers the addition in a subsequent year, the value of the improvement may be taxed under the omitted tax statute. Under the statute, property omitted in either of the two previous assessment years is subject to taxation at the tax rate for the corresponding year on the current year's tax roll.

Tax Settlement Process. Municipalities (taxation districts) serve as the collection agent for property taxes and various other charges imposed by other local governments (taxing jurisdictions).

The disbursement of collections occurs through the tax settlement process whereby the municipality settles with other local governments for the collections the municipality made on their behalf. General property tax collections are settled proportionately to each jurisdiction's tax levy. For example, if the school levy comprises 40% of the total property taxes levied within a municipality, the school district receives 40% of the amount collected by the municipality. Collections of special assessments, special charges, and special taxes are disbursed to the local government imposing those assessments, charges, or taxes. Currently, municipalities retain all collections of omitted taxes, except for omitted taxes on manufacturing property, which are shared similarly to general property taxes.

Charge-Back of Refunded or Rescinded Taxes. Local taxing jurisdictions set their property tax levies in the fall of each year and notify the underlying municipality of the amounts that the municipality should collect on their behalf. The clerk of the municipality prepares the property tax roll and transfers the roll by the third Monday in December to the municipal treasurer for the preparation of tax bills. If the municipality discovers that a taxpayer has been overtaxed due to an error (such as the same property being taxed twice), the municipality may rescind the tax or refund the tax if the taxpayer has already paid the tax. The municipality bears the full burden of this action, even though the rescinded or refunded amount includes taxes imposed both by the municipality and by the school district, county, technical college district, state, and special purpose district, if any. Each of these other taxing jurisdictions receives the total amount of taxes that they asked the municipality to collect on their behalf, while the municipality receives less than it levied.

If the amount of refunded or rescinded taxes imposes an unfair burden on the municipality, state law offers a remedy. Municipalities may submit a form to the Department of Revenue (DOR) by October 1 of each year listing the taxes that it has refunded and rescinded. The Department is required to determine the significance of the value of property for which taxes have been refunded and rescinded relative to the municipality's total equalized value. If the value of the reported property exceeds a threshold, the Department may authorize the municipality to recover the portion of the refunded and rescinded taxes paid to the municipality's overlying taxing jurisdictions. The Department is required to "certify" these amounts, and the other taxing jurisdictions must pay the municipality the certified amounts by the following February 15. As a result, the municipality bears the entire burden of the refunded or rescinded taxes for approximately one year, at which time, the burden is spread proportionately.

## **SUMMARY OF ASA 1 TO AB 159**

Omitted Taxes. ASA 1 seeks to require municipalities to share omitted tax collections with other taxing jurisdictions by amending the state statutes pertaining to the tax settlement process and the procedures for charging back refunded or rescinded taxes. First, it would amend two tax settlement provisions used by municipalities that collect property taxes in two installments and one tax settlement provision used by municipalities that collect property taxes in multiple installments. Currently, each of these provisions directs municipalities to retain all omitted tax collections. ASA 1 would amend these provisions to exclude taxes subject to charge-back or sharing. The exclusion

utilizes cross-references to the charge-back statute described above and the charge-back statute for personal property taxes, described below. Because the cross-referenced statutes pertain to taxes that were not collected, it is unclear how the taxes will be shared. While ASA 1 also amends the two charge-back statutes, it does not remedy this deficiency. Instead, ASA 1 amends the charge-back of refunded or rescinded taxes statute by creating a provision related to the form that municipalities submit to DOR listing the total amount of taxes that it has refunded or rescinded. Under ASA 1, omitted taxes would be included on the form. The ASA 1 amendment of the charge back statute for personal property taxes is described below and does not pertain to omitted taxes. Therefore, the inclusion of the cross-reference to this statute in the three tax settlement provisions appears to be in error.

Because the tax settlement and charge-back processes are unrelated, it is unclear how the proposal's changes would be implemented. State law could be changed to require the sharing of omitted taxes without amending the statute relating to the charge back of refunded or rescinded taxes and cross-referencing the statute authorizing the charge-back of personal property taxes.

Charge-Back of Personal Property Taxes. ASA 1 also would change the charge-back procedure for delinquent property taxes. At the February tax settlement, current law requires municipalities to settle in full with other taxing jurisdictions for all outstanding personal property taxes. The municipality is allowed to retain any delinquent amounts that it collects during the ensuing year. Between February and April of the subsequent year, municipalities may proportionately charge back any amounts remaining delinquent to the other taxing jurisdictions. Those jurisdictions must reimburse the municipality within 30 days of receiving notice of the charge back.

ASA 1 would limit personal property charge-backs to three circumstances: (1) the taxes are owed by an entity that has ceased operations; (2) the taxes are owed by an entity that has filed a petition for bankruptcy; or (3) the taxes are due on personal property that has been removed from the next assessment roll. The reimbursement requirement would be changed to no later than the first May 1 after notification of the charge-back.

## **FISCAL EFFECT**

Most of the information included in the original DOR fiscal estimate on AB 159 would also apply to ASA 1. In its fiscal estimate, DOR reports that 143 taxation districts (municipalities) levied \$1,304,000 in omitted taxes in the 2007(08) property tax year. Under current law, municipalities retain these collections. If all of the collections were subject to sharing under the tax settlement process, payments would have equaled about \$564,000 to school districts, \$246,000 to counties, \$98,000 to technical college districts, \$23,000 to special purpose districts, and \$11,000 to the state. Municipalities would experience an offsetting revenue loss of \$942,000. These amounts would be lower under ASA 1 because the substitute amendment would employ a threshold that triggers the sharing of omitted taxes based on the value of the property subject to the omitted taxes. However,

the magnitude of the change resulting from the substitute amendment is unknown. The proposed settlement procedures would increase administrative costs at both the state and local levels.

Under the changes to the charge-back procedures for personal property taxes, charge-backs would be delayed. Because DOR has no administrative role in this process, the Department has no statewide data indicating the magnitude of the change.

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