

AUTHORED ARTICLES & PUBLICATIONS | FEB 22, 2015

Best in Law: Tug-of-War Over Changing Prop. 13 Remains Intense

BB&K Partner Michael Grant Explores How the Controversial 1978 California Real Estate Law Could Be Change in *The Press-Enterprise* Best in Law Column

By Michael Grant

A “split roll” might sound like something you would find in a bakery. But in fact, it is a real property tax concept that has been the subject of a tug-of-war since Proposition 13 was overwhelmingly passed by California voters in 1978.

Proposition 13 capped assessed values for all California real estate at 1975 levels, with a maximum 2 percent increase per year. Reassessment to current values generally occurs only upon a “change of ownership” or if there is “new construction” (such as a room addition).

Most California property owners have enjoyed the tax relief afforded by Proposition 13 and continue to support it. However, in the face of state budget shortfalls in recent years, a vocal minority continues to seek to reverse some or all of Proposition 13.

One suggestion is to treat residential and commercial properties differently — a “split tax roll.” Under this approach, there would be no immediate change in assessed value or tax rates on residential property, but commercial property would be assessed at its current fair market value.

Proponents estimate that revenues from increased commercial real estate property taxes would total between \$10 billion and \$12 billion per year.

In recent years, dozens of bills have been introduced in Sacramento seeking to tighten perceived loopholes in the taxation of commercial properties, or to adopt the split roll and allow all commercial real estate to be assessed at its current fair market value. To date, Proposition 13 remains largely unchanged. The sides in this tug-of-war and the arguments of each are well-defined.

Those who seek to adopt a split roll complain that commercial property owners can game the system by incrementally transferring fractional interests in

Related Practices

[Business](#)

[Real Estate](#)

Related Industries

[Business](#)

commercial properties, resulting in a de facto change of ownership without reassessment. Commercial property owners, they say, are not paying their “fair share.” In their view, increased revenue is needed to fund schools and social safety net programs.

Annual opinion polls conducted by the Public Policy Institute of California indicate that split roll proponents are predominately Democrats from coastal urban areas. Split roll legislation is often sponsored by public education and public employee organizations.

Opponents of the split roll argue that it would have a negative effect. A 2012 study by the Pepperdine University Davenport Institute estimated a cost to the California economy of \$71.8 billion and the loss of almost 400,000 jobs over the first five years.

They maintain that commercial properties are already being assessed much closer to their market value than residential properties and that adoption of the split roll would significantly deepen the perception that California is “anti-business.” They charge that split roll proponents want to persuade the electorate to tax “the other guy” — in this case, supposedly rich commercial property owners.

According to the PPIC poll, split roll opponents are predominately Republicans. Opponents include Chambers of Commerce, tax watchdog groups and business associations.

Adoption of a split tax roll in California may continue to be difficult. It would require an amendment to the California Constitution, which in turn would require a successful voter initiative, in addition to passage by the Legislature.

Proponents are undaunted, some expressing a desire to “break Proposition 13’s grip on the State’s public finances” (as the head of the California Tax Reform Association hopes to do) or, in the words of Assemblyman Tom Ammiano, D-San Francisco, to “nuke Prop. 13.”

There are questions around a split roll: What constitutes “commercial property?” What about a mixed commercial and residential project? Or an apartment project or a co-op (in which there is a mixture of ownership and apartment characteristics)?

Since many commercial leases are so-called “triple net” leases in which tenants pay all expenses (including property taxes), commercial tenants could experience significant rental expense increases. Even tenants under gross leases (in which property taxes are often factored into the base rent) could experience increased rental rates as higher taxes are eventually passed

through.

Despite an improving California economy, we can expect the “split roll” debate to continue.

**This article first appeared in [The Press-Enterprise](#) on Feb. 22, 2015.*

Republished with permission.

Michael Grant is no longer with BB&K. If you have questions about this article, please contact Margaret “Peggy” A. Hosking at margaret.hosking@bbklaw.com.