

Notice of Proposed Regulatory Action
The State Board of Equalization Proposes to Amend
California Code of Regulations, Title 18,
Section 462.540, *Change in Ownership – Base Year Value Transfers*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to amend California Code of Regulations, title 18, section (Rule or Property Tax Rule) 462.540, *Change in Ownership – Base Year Value Transfers*. This Rule implements, interprets, and makes specific certain change in ownership provisions provided in section 2.1 of article XIII A of the California Constitution (Section 2.1) and section 69.6 of the Revenue and Taxation Code.¹

PUBLIC HEARING

The Board will conduct a meeting on November 17-18, 2022, in-person and via teleconference. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. on November 17, 2022, or as soon thereafter as the matter may be heard at the Board’s November 17-18, 2022 meeting. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of amendments to Property Tax Rule 462.540 (the Proposed Amendments).

AUTHORITY

Government Code section 15606, subdivision (c).

REFERENCE

Article XIII A, section 2.1, California Constitution; and Revenue and Taxation Code sections 60, 69.5 and 69.6.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of one percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines full cash value to mean a county assessor's valuation of real property as shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. In

¹ All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

general, properties are reassessed to current market value only upon a change in ownership or the completion of new construction, establishing a new "base year value" for property tax purposes. The California Legislature codified the definition of "change in ownership" in section 60 and codified additional Revenue and Taxation Code sections regarding whether a transfer of property results in a change in ownership, is excluded from the definition of "change in ownership," or allows for the transfer of a property's base year value to a replacement property. (Rev & Tax. Code §§ 61 through 69.6.)

Relevant to this Rule, voters amended Article XIII A of the Constitution several times to provide specified conditions permitting the transfer of a property's base year value from a current, or original, principal residence to a replacement principal residence. Most recently, at the November 3, 2020, general election, the voters amended the constitution by approving Proposition 19. Proposition 19 defined eligibility conditions for persons, who are aged 55 or older, severely disabled, or a victim of wildfire or natural disaster, to engage in statewide base year value transfers (by adding Section 2.1, subdivisions (b) and (e) to Article XIII A).

On September 30, 2021, the Governor approved Senate Bill (SB) 539,² which, among other things, added section 69.6 to the Revenue and Taxation Code. SB 539 went into immediate effect. Section 69.6 codifies the provisions of Proposition 19 generally providing that any person over 55 years of age, or any severely and permanently disabled person, or a victim of wildfire or natural disaster who resides in property that is eligible for either the homeowners' exemption or the disabled veterans' exemption may transfer the factored base year value of that property to any replacement dwelling that is purchased or newly constructed by that person as their principal residence within two years of the sale by that person of the original property.

Effects, Objectives, and Benefits of the Proposed Amendments to the Property Tax Rule

Under the authority of Government Code section 15606, subdivision (c), which authorizes the Board to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing, the Board adopted Property Tax Rule 462.540, *Change in Ownership – Base Year Value Transfers* to implement, interpret, and make specific the base year value transfer provisions instituted by Proposition 19 through the regular rulemaking process. Rule 462.540 became effective on January 1, 2022.

Following the promulgation of Rule 462.540, additional amendments were deemed necessary to further implement, interpret, and make specific Proposition 19 and section 69.6. Pursuant to authority granted under section 69.6, amendments to the Rule were made through the emergency rulemaking process. The emergency amendments became effective on July 18, 2022 and will expire on January 18, 2023. To make the emergency amendments to Rule 462.540 permanent and to make additional amendments to the Rule, the Board initiated the certificate of compliance and regular rulemaking process.

The emergency amendments to Rule 462.540 made the following changes:

² Statutes 2021, chapter 427, section 3.

- Improve clarity. These amendments strike out the existing language at subdivision (b)(3) and places substantially the same language in subdivision (c)(3). Further, the word "dwelling" is changed to "primary residence" in subdivision (d)(3) of the Rule to make consistent with the remainder of the Rule.

- Definition of "severely and permanently disabled". Proposition 19 allowed "severely disabled" persons to qualify for the base year value transfer but did not define "severely disabled". The Legislature, under its authority to enact statutes that provide applicable procedures and definitions for Proposition 19, enacted section 69.6 to allow the base year value transfer to "severely and permanently disabled" persons. Although the term "severely and permanently disabled" is not defined in section 69.6, it is defined in section 69.5, subdivision (g)(12) by reference to section 74.3, subdivision (b). This action amends subdivisions (a) and (d)(1)(B) of the Rule to add "and permanently" to "severely disabled" to be consistent with section 69.6. It also adds a definition of "severely and permanently disabled" at subdivision (c)(14) that is the definition provided in section 69.5 of the same phrase since by making the phrases the same, the Legislature has signaled its intent to make the qualification for disabled individuals the same for section 69.6 as in section 69.5.

- "Equal or lesser value". Section 69.6, subdivision (d)(13) added a definition of the phrase "equal or lesser value". This definition requires, depending on the time the replacement dwelling is purchased in relation to the sale of the original property, the full cash value of the original property to be adjusted not at all, by an increase of five percent, or by an increase of 10 percent. The phrase "greater value," while not explicitly defined, in context, must mean a value that is not of "equal or lesser value". These amendments add the definition of "equal or lesser value" to subdivision (c)(2), and a definition of "greater value" to subdivision (c)(5).

Subdivision (b)(2) of Rule 462.540 is amended to include the adjustment provided by subdivision (c)(2) when calculating the amount to be transferred to the replacement primary residence, and Example 8 is amended to demonstrate the calculation of the amount to be transferred to the replacement primary residence.

Subdivision (f)(2) of this Rule is amended to clarify that the adjustment provided by subdivision (c)(2) when calculating the amount to be transferred to a replacement primary residence that is newly constructed after an initial claim for the base year value transfer has already been granted is to be made.

- Accessory Dwelling Units. Section 69.6, subdivision (d)(5) added the provision that a multiunit dwelling does not include an accessory dwelling unit or junior accessory dwelling unit meeting several conditions. Subdivision (g)(3) of this Rule adds these conditions to the Rule and further provides definitions of "accessory dwelling unit" and "junior accessory dwelling unit" by reference to the Government Code provisions that govern the building of accessory dwelling units and junior accessory dwelling units.

- Misfortune/Calamity. Section 69.5 stated that taxpayers that experienced a misfortune or calamity to their principal residence were eligible to use the pre-misfortune or calamity full cash value of their principal residence for the required comparison of full cash value with a replacement property. The explicit language explaining this calculation was added to section 69.5 by Stats. 2001, c. 613 (SB 1184), § 2. Legislative intent in SB 1184 explained that the addition of that language was a mere clarification. Since section 69.6 contains the same language as section 69.5 prior to the clarification added by SB 1184, its interpretation should be the same. Therefore, subdivisions (a)(2), (c)(3), and (c)(4) of this Rule are amended to make clear that full cash value of properties damaged by misfortune or calamity compared to the full cash value of the replacement dwelling should be the full cash value of that property prior to the misfortune or calamity. Subdivision (c)(16) provides a definition of "substantially damaged or destroyed by misfortune or calamity" to make clear the amount of damage that must be done to a property to be eligible to use the pre-misfortune or calamity full cash value of the original property.

- New construction on previously owned land. Amendments to subdivisions (a)(4), (f)(1) and (f)(3), as well the addition of subdivisions (c)(4)(C) and (c)(4)(D), as well as the addition of Example 12, clarify that land can be acquired more than two years prior to the sale of the original property, and that the full cash value of both the land and the improvement is to be determined as of the new construction completion date, as required for section 69.5 by *Wunderlich v. Santa Cruz* (2009) 178 Cal.App.4th 680. In other words, the amendments clarify that underlying land may be acquired more than 2 years prior to sale of the original property (subd. (a)(4)), and if new construction is completed within two years of the original property's sale, the full cash value of the replacement property includes the new construction, based on the date of new construction completion, for purposes of the base year value transfer calculation (subds. (c)(4)(D), (f)(3), Ex. 12). If the claim transferring the base year value has already been approved as of the date of new construction completion, the additional value of the new construction is taken into consideration in calculating the transferred base year value (subd. (c)(4)(C), (f)(1)).

Additional amendments to Rule 462.540 make the following changes:

- Subdivision (c)(3) was amended to clarify that the “pre-event” factored base year value may be used for wildfire or natural disasters as well as misfortune or calamity.

The above clarifications are reasonably necessary for the efficient and fair administration of the change in ownership provisions under section 69.6 and section 2.1 of article XIII A of the California Constitution applicable to base year value transfers. The Board anticipates that the Proposed Amendments will increase openness and transparency in government and benefit the public, local boards of equalization and assessment appeals boards, county assessors, and owners of property potentially eligible for a base year value transfer provided by section 69.6. Portions of the Proposed Amendments may duplicate or overlap language found in Revenue and Taxation Code section 69.6 or in Section 2.1 of Article XIII A; however, the “nonduplication” standard found at Government Code section 11349.1, subdivision (a)(6) is met because, pursuant to 1 Code of California Regulations section 12, subdivision (b)(1), the duplication or overlap is

necessary to satisfy the “clarity” standard of Government Code section 11349.1, subdivision (a)(3). Without the duplication or overlap, the rule would be incomplete or unclear.

The Board has performed an evaluation of whether the amendments to proposed Property Tax Rule 462.540 are inconsistent or incompatible with existing state regulations. The Board has determined that the Proposed Amendments are not inconsistent or incompatible with existing state regulations because there are no other Property Tax Rules that prescribe the provisions that would be adopted by the amendments to the Rule. In addition, there is no comparable federal regulation or statute to Property Tax Rule 462.540.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

Section 5 of SB 539 states that “[n]o reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the duties imposed on a local agency or school district by this act are necessary to implement, or were expressly included in, a ballot measure approved by the voters in a statewide or local election, within the meaning of Section 17556 of the Government Code.” Thus, the Proposed Amendments do not impose a mandate on a local agency that is reimbursable. The Board has also determined that the adoption of the Proposed Amendments will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

FISCAL IMPACT

Board staff estimated that the amendments to this rule will result in an absorbable one-time cost of \$923 for the Board to communicate with interested parties and update its website after the rule amendment is completed assuming that the average hourly compensation costs are \$57.66 per hour³ and that it will take approximately 16 hours. There will be no savings. The Board has determined that the adoption of the Proposed Amendments will result in no other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the Proposed Amendments will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

³ Source: Hourly compensation costs are from the U.S. Bureau of Labor Statistics. Hourly compensation costs are for State and Local Government Workers. *Employer Costs for Employee Compensation – December 2021: Table 3. Employer Costs for Employee Compensation for state and local government workers by occupational and industry group*, <https://www.bls.gov/news.release/ecec.htm>.

SMALL BUSINESS

The adoption of the Proposed Amendments is not expected to affect small business since the rule only potentially affects the owners of family farm small businesses but not the business itself.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board assessed the economic impact of proposed new Property Tax Rule 462.540 on California businesses and individuals and determined that the Proposed Amendments are not a major regulation as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment (EIA) required by Government Code section 11346.3, subdivision (b)(1), for the Proposed Amendments and included it in the initial statement of reasons. In the EIA, the Board has determined that the adoption of the Proposed Amendments will neither create nor eliminate jobs in the State of California, nor create new businesses or eliminate existing businesses within the state, nor expand businesses currently doing business in the State of California. Furthermore, the Board has determined that the adoption of the Proposed Amendments will not affect the benefits of the rule to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the Proposed Amendments to Property Tax Rule 462.540 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the Proposed Amendments should be directed to Mr. Henry Nanjo, Chief Counsel, by telephone at (916) 274-3520, by e-mail at henry.nanjo@boe.ca.gov, or by mail at State Board of Equalization, Attn: Henry Nanjo, MIC: 121, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0121.

Written comments for the Board’s consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Honey Her, Regulations Coordinator, by telephone at (916) 274-3523, by e-mail at honey.her@boe.ca.gov, or by mail at State Board of Equalization, Attn: Honey Her, MIC: 121, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0121. Ms. Her is the designated backup contact person to Mr. Nanjo.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on November 17, 2022, or as soon thereafter as the Board holds the public hearing regarding the Proposed Amendments during the November 17-18, 2022, Board meeting. Written comments received by Ms. Honey Her at the postal address or email address provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the Proposed Amendments. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared a version of the Proposed Amendments to Property Tax Rule 462.540 illustrating the express terms of the Proposed Amendments and an initial statement of reasons for the adoption of the Proposed Amendments, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the Proposed Amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 160 Promenade Circle, Suite 200, Sacramento, CA 95834. The express terms of the Proposed Amendments and the Initial Statement of Reasons are also available on the Board’s website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the Proposed Amendments with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days prior to adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the Proposed Amendments orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Ms. Her. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the Proposed Amendments, the Board will prepare a final statement of reasons, which will be made available for inspection at 160 Promenade Circle, Suite 200, Sacramento, CA 95834, and available on the Board's website at www.boe.ca.gov.