

**Amend Section 69.4 of, and add Section 74.7 to, the Revenue and Taxation Code to define terms so owners of contaminated property may receive property tax relief either by transferring the base year value or reconstructing improvements without reassessment.**

**Source: Property Taxes Department**

On November 3, 1998, the voters of California approved Proposition 1, adding subdivision (i) to Section 2 of Article XIII A of the California Constitution. Upon implementation by the Legislature, this amendment allows property tax relief in one of two forms for qualified contaminated property. Specifically, property owners are able to choose from *either* of the following:

1. They may sell or otherwise transfer the qualified contaminated property and transfer its base year value to a replacement property of equal or lesser value. The replacement property must be acquired or newly constructed within five years *after* the sale or transfer of the qualified contaminated property. If the replacement property is located in a different county than the qualified contaminated property, then the county in which the replacement property is located must have passed a resolution accepting such base year value transfers.
2. They may reconstruct their property where structures located on the qualified contaminated property are substantially damaged or destroyed in the course of the remediation of the environmental problems, and the repair or replacement of the structures would be excluded from the definition of "new construction" provided that the repaired or replacement structure is similar in size, utility, and function to the original structure.

This relief applies to replacement property that is acquired or newly constructed on or after January 1, 1995, and to property repairs performed on or after that date.

Chapter 941, Statutes of 1999 (SB 1231, SR&T), added Section 69.4 to the Revenue and Taxation Code to provide the necessary Legislative implementation of these constitutional provisions permitting this property tax relief. The initial language of Section 69.4 was intentionally brief because, as a result of Legislative turnover, the author of the constitutional amendment was no longer in office to introduce the necessary implementation language and no other member had introduced legislation. Consequently, the amendments were added quickly to a Senate Revenue and Taxation Committee bill near the end of the session to provide immediate assistance to taxpayers in Orange County who had been waiting since 1995 for relief. Since the constitutional language was rather detailed it was hoped that simple Legislative implementation of Proposition 1 would be sufficient. However, as other counties have attempted to administer its provisions to situations

particular to their counties, such as the cleanup efforts of Avila Beach in San Luis Obispo, Board staff and assessors have found that additional language is necessary to determine eligibility. Defining language is needed in the following areas:

**VALUE COMPARISON CRITERIA.** Section 69.5 provides that “equal or lesser value” means that the full cash value of the replacement property at the time of its purchase must be 105% or less of the full cash value of the sold property if purchased in the first year following the sale of the original property, and 110% or less if purchased in the second year following the sale. Section 69.3 provides thresholds of 105% in the first year, 110% in the second year, and 115% in the third year.

Proposition 1 provides that the replacement property be acquired within 5 years. Following the precedents set in Sections 69.3 and 69.5, Section 69.4 should specify value thresholds that step up from 105% in the first year following acquisition of the replacement property to 125% in the fifth year following such acquisition.

**COMPARABILITY.** Property purchased as a replacement for contaminated property should be comparable to the property being replaced. For example, a base year value should not be transferred from a residential property to a commercial property. The Legislative Analyst stated in the ballot pamphlet describing Proposition 1 that “[t]he replacement property could involve either (1) the repair or reconstruction of a damaged structure on the contaminated site or (2) purchase of a *similar* structure on a different site.” (Emphasis added.) In addition, the “Argument in Favor of Proposition 1” discussed how innocent homeowners who are victims of environmental disasters could receive relief for a replacement home under this constitutional amendment.

**REQUESTING RELIEF.** Language is needed itemizing what information the taxpayer needs to provide in order to receive relief. In addition, to be consistent with other code sections authorizing transfers of base year value, a three-year time limit for requesting relief should be added. Further, language should be added requiring a Board-prescribed form for requesting the relief.

**NEW CONSTRUCTION EXCLUSION.** The exclusion from new construction in Section 69.4 should to be moved from Section 69.4 (Chapter 2, Change in Ownership and Purchase) to Chapter 3 (New Construction), Section 70 et seq.

**SIMILAR IN SIZE, UTILITY, AND FUNCTION.** In determining whether a base year value may be transferred under Section 69 (disaster relief), this phrase is used in defining whether a replacement property is comparable to property damaged by a Governor-declared disaster. “Size and utility” are said to be interrelated and associated with value.

Similar to Section 69, Proposition 1 provides that a replacement property must be “similar in size, utility, and function” to the original property. Accordingly, wording similar to that used in that section should be applied to the new construction exclusion under Section 69.4.

*Section 69.4 of the Revenue and Taxation Code is amended to read:*

69.4. (a) Notwithstanding any other provision of law, pursuant to the authority of subdivision (i) of Section 2 of Article XIII A of the California Constitution, the base year value of qualified contaminated property may be transferred, subject to the conditions and limitations provided in this section, to a comparable replacement property of equal or lesser value that is acquired or newly constructed as a replacement for the contaminated property, pursuant to subparagraph (A) of paragraph 1 of that subdivision, ~~or if the remediation of the contamination requires the repair or replacement of contaminated property, that repair or replacement shall not be considered “new construction,” pursuant to subparagraph (B) of that subdivision.~~

(b) The base year value of the original property shall be the base year value of the original property as determined in accordance with Section 110.1, with the inflation factor adjustments permitted by subdivision (f) of Section 110.1. The base year value of the original property shall also include any inflation factor adjustments permitted by subdivision (f) of Section 110.1 up to the date the replacement property is acquired or newly constructed, regardless of whether the claimant continued to own the original property during this entire period. The base year or years used to compute the base year value of the original property shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

(c) A county board of supervisors may adopt a resolution making the provisions of this section applicable to replacement properties acquired to replace qualified contaminated properties located in another county within this state. A resolution adopted pursuant to this paragraph shall be applicable only if it complies with all of the following requirements:

(1) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county’s boundaries.

(2) It requires that all claims for transfers of base year value from qualified contaminated property located in another county be granted if the claims meet the applicable requirements of both subdivision (i) of Section 2 of Article XIII A of the California Constitution and this section.

(3) It requires that all base year valuations of qualified contaminated property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base year value.

(4) The resolution provides that its provisions shall remain operative for a period of not less than five years.

(5) The resolution specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 3, 1998. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(d) If the owner or owners of the qualified contaminated property receive property tax relief under this section, that property shall not be eligible for property tax relief under section 74.7.

(e) For purposes of this section:

(1) "Equal or lesser value" means that the amount of the full cash value of a replacement property does not exceed one of the following:

(A) One hundred and five percent of the amount of the full cash value of the original property if the replacement property is purchased or newly constructed within the first year following the date of the sale of the original property.

(B) One hundred and ten percent of the amount of the full cash value of the original property if the replacement property is purchased or newly constructed within the second year following the date of the sale of the original property.

(C) One hundred and fifteen percent of the amount of the full cash value of the original property if the replacement property is purchased or newly constructed within the third year following the date of the sale of the original property.

(D) One hundred and twenty percent of the amount of the full cash value of the original property if the replacement property is purchased or newly constructed within the fourth year following the date of the sale of the original property.

(E) One hundred and twenty-five percent of the amount of the full cash value of the original property if the replacement property is purchased or newly constructed within the fifth year following the date of the sale of the original property. For purposes of this paragraph, except as provided in paragraph (4) of subdivision (h), if the replacement property is, in part, purchased and, in part, newly constructed, the date the replacement property is "acquired or newly constructed" is the date of acquisition or the date of completion of construction, whichever is later.

(2) "Fair market value of the replacement property" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was acquired or new construction was completed. If the replacement property is, in part, acquired and, in part, newly constructed, "fair market value of the replacement property" means the full cash value of the land as of the date it was acquired plus the fair market value of the new construction as of the date of completion.

(3) "Fair market value of the qualified contaminated property" means its full cash value if that property were not contaminated, determined in accordance with Section 110.1, as of the date of its sale or transfer by the claimant.

(4) "Claimant" means any owner of qualified contaminated property claiming the property tax relief provided by this section.

(5) "Comparable replacement property" means a property that is similar in utility and function to the property that it replaces.

(A) Property is similar in utility if it is, or is intended to be, used in the same manner as the qualified contaminated property.

(B) Property is similar in function if the replacement property is subject to similar governmental restrictions, such as zoning.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form that the assessor shall make available upon request, the following information:

(1) The name of each claimant who was a record owner of the qualified contaminated property at the time of its sale or is a record owner of the replacement property.

(2) Proof that the claimant did not participate or acquiesce in any act or omission that rendered the real property uninhabitable or unusable, as applicable, or is related to any individual or entity that committed that act or omission.

(3) Proof that the qualified contaminated property has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.

(4) The address and, if known, the assessor's parcel number of the qualified contaminated property.

(5) The date of the claimant's sale of the qualified contaminated property and the date of the claimant's purchase or new construction of a replacement property.

The State Board of Equalization shall design the form for claiming eligibility. Any claim under this section shall be filed within three years of the date the replacement property was purchased or the new construction of the replacement property was completed.

(g) (1) Upon the timely filing of a claim, the assessor shall adjust the new base year value of the replacement property in conformity with this section. This adjustment shall be made as of the latest of either the date the replacement property is acquired or the date the new construction of the replacement property is completed.

(2) Any taxes that were levied on the replacement property prior to the filing of the claim on the basis of the replacement property's new base year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount that would be due when determined on the basis of the adjusted new base year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base year value of replacement properties acquired prior to the sale or transfer of the qualified contaminated property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement property

subsequent to the transfer of base year value, the property tax relief provided by this section also shall apply to the replacement property, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within five years of the date of the sale or transfer of the qualified contaminated property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement property on the date of acquisition, is not more than the full cash value of the qualified contaminated property as determined pursuant to paragraph (3) of subdivision (e) for purposes of granting the original claim.

(h) This section applies only to replacement property that is acquired or newly constructed on or after January 1, 1995.

*Section 74.7 is added to the Revenue and Taxation Code:*

74.7. (a) For purposes of paragraph (1)(B) of section (i) of Section 2 of Article XIII A, where remediation of the environmental problems on qualified contaminated real property requires the destruction of, or results in substantial damage to, a structure located on that property, "new construction" does not include the repair of a substantially damaged structure, or the construction of a structure replacing a destroyed structure on the qualified property, performed after the remediation of the environmental problems on that property, provided that the repaired or replacement structure is similar in size, utility, and function to the original structure.

(b) For purposes of this section:

(1) "Substantially damaged" means the structure sustains physical damage amounting to more than 50 percent of its full cash value as if the property were not contaminated.

(2) "Similar in function" means the replacement structure is subject to similar governmental restrictions, such as zoning.

(3) "Similar in size and utility" means the size and utility of the structure are interrelated and associated with value. A structure is similar in size and utility only to the extent that the replacement structure is, or is intended to be, used in the same manner as the structure on the contaminated property (i.e., single-family residential and duplex, multi-family residential other than duplexes, commercial, industrial, agricultural, etc.) and its full cash value does not exceed 120 percent of the full cash value of the replaced structure if that property were not contaminated.

(A) A replacement structure or any portion thereof used or intended to be used for a purpose substantially different than the use made of the replaced

structure, shall to the extent of the dissimilar use be considered not similar in utility.

(B) A replacement structure or portion thereof which satisfies the use requirement but has a full cash value which exceeds 120 percent of the full cash value of the structure if that property were not contaminated, be considered, to the extent of the excess, not similar in utility and size.

(4) To the extent that replacement property, or any portion thereof, is not similar in function, size and utility, the property, or portion thereof, shall have a new base year value determined pursuant to Section 110.1.

(c) Only the owner or owners of the property substantially damaged or destroyed in the process of remediation of the contamination, whether one or more individuals, partnerships, corporations, other legal entities, or a combination thereof, shall receive property tax relief under this section.

(d) In order to receive the exclusion provided for in this section, the property owner shall notify the assessor in writing prior to, or within 30 days of, completion of any project covered by this section that he or she intends to claim the exclusion.

(e) This section applies to new construction completed on or after January 1, 1995.