DRAFT

STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended:	**Enrolled**	Bill No:	**SB 153**
Tax:	**Property**	Author:	**Migden**
Related Bills:	**SB 1113 (Migden)**		

BILL SUMMARY

This bill would until January 1, 2019, provide an exclusion from change in ownership where two individuals owned a principal residence together (as joint tenants or tenants in common) and the property transferred from one cotenant to the other upon the death of the transferor cotenant with the survivor cotenant obtaining sole ownership of the property.

ANALYSIS

CURRENT LAW

Under existing property tax law, real property is reassessed to its current fair market value whenever there is a "change in ownership." Generally, a transfer of interest in property between two people that own real property due to the death of one results in a change in ownership in proportion to the percentage interest transferred unless the transfer qualifies for one of the many change in ownership exclusions available under existing law. These include exclusions for transfers of interests between persons that are spouses, between persons that are registered domestic partners, between persons that have a parent-child relationship, and between persons that own property in a joint tenancy form of ownership where the surviving joint tenant has original transferor status[1]. (*California Constitution Article XIIIA, Sec. 2; Revenue and Taxation Code Sections 60 – 69.5)* However, under existing law, there are no exclusions from change in ownership for transfers of real property owned between two unrelated persons as tenants in common.

PROPOSED LAW

This bill would add Section 62.3 to the Revenue and Taxation Code to provide that a transfer of a cotenancy interest, as defined, in real property from one cotenant to the other that takes effect upon the death of the transferor cotenant would be excluded from reassessment as a "change in ownership" if the real property constitutes the principal residence of both cotenants. The proposed change in ownership exclusion would be available if the following conditions are satisfied:

- **Principal Place of Residence.** The property constitutes the principal residence of both cotenants immediately preceding the transferor cotenant's death and both continuously resided at that residence for the one-year period immediately preceding the date of death. The transferee must sign an affidavit affirming that these requirements have been met.

[1]When a person has "original transferor status" a termination of a joint tenancy interest that results in the property transferring to the original transferor does not result in a change in ownership of the property when the surviving joint tenant becomes the sole owner of the property by rights of survivorship. (Rev. & Tax. Code §65(d))

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- **Ownership.** For the one-year period immediately preceding the transferor cotenant's death both cotenants were owners of record of the property.
- **Form of Ownership.** The property must be held in a tenant in common or joint tenancy form of ownership by the cotenants, with no other individual holding title to the property. That is, two individuals must together own either 100 percent of the real property in joint tenancy or 100 percent of the real property as tenants in common.
- **Death.** The transfer must occur due to the death of one of the cotenants and the surviving cotenant must thereafter obtain a 100 percent ownership interest in the real property immediately after the transfer.
- **Method of Acquisition.** Upon the death of the transferor cotenant, the property must be acquired via the transferor cotenant's will or trust; intestate succession; or by other operation of law.
- **Ten Year Window.** The transfer occurs on or after January 1, 2009 and before January 1, 2019.

Any Other Available Exclusion Has Priority. The cotenancy exclusion would not apply if any other provision in the Revenue and Taxation Code provides a change in ownership exclusion such as the interspousal, registered domestic partner, or parent-child exclusions, and the joint tenancy exclusion where the surviving joint tenant has original transferor status.

IN GENERAL

Property Tax System. California's system of property taxation values property at its 1975 fair market value, with annual increases limited to the inflation rate, as measured by the California Consumer Price Index, or 2%, whichever is less, until the property changes ownership or is newly constructed. At the time of the ownership change or completion of new construction, the value of the property for property tax purposes is redetermined based on current market value. The value initially established, or redetermined where appropriate, is referred to as the "base year value." Thereafter, the base year value is subject to annual increases for inflation. This value is referred to as the "factored base year value." This system results in substantial property tax savings for long term property owners.

Proposition 13. Proposition 13 was an initiative approved by voters on June 6, 1978 adding Article XIII A to the California Constitution, which established a new system of property taxation as described above. The initiative only contained about 400 words. Related to this bill, subdivision (a) of Section 2 of the initiative provided:

> "The full cash value means the County Assessors valuation of real property as shown on the 1975-76 tax bill under 'full cash value', or thereafter, the appraised value of real property when **purchased,** newly constructed, **or a change in ownership has occurred** after the 1975 assessment. All real property not already assessed up to the 1975-76 tax levels may be reassessed to reflect that valuation." (Emphasis added.)

The initiative did not define “change in ownership” within its text. The ballot pamphlet did not define, nor did it discuss, the term "change in ownership." The only reference in the ballot pamphlet to the "change in ownership" concept is found in the Analysis of the Legislative Analyst. The Legislative Analyst states:

> "For property which is sold or newly constructed after March 1, 1975, the assessed value would be set at the appraised (or market) value at the time of sale or construction." (Emphasis added.)

Because the language of the initiative failed to define this integral element, it fell to the Legislature to determine what constitutes a “change in ownership” and to define the term through legislation. Consequently, the statutory scheme defining "change in ownership" enacted after Proposition 13 was done so without specific constitutional mandate or authorization.

Task Force on Property Administration. Following the passage of Proposition 13, the Assembly Revenue and Taxation Committee appointed a task force to study existing property tax statutes in light of Proposition 13, and to recommend the appropriate changes to the Revenue and Taxation Code in light of the ambiguities of Proposition 13. The Task Force was a broad based 35-member panel that included legislative and Board staff, county assessors, attorneys in the public and private sectors, and trade associations. The Task Force issued its "Report of the Task Force on Property Tax Administration" to the Assembly Revenue and Taxation Committee on January 22, 1979.

Defining Change in Ownership. In defining change in ownership, the Task Force’s goal was to distill the basic characteristics of a “change in ownership” and embody them in a single test, which could be applied evenhandedly to distinguish between “changes” and “non-changes.” It ultimately concluded that a change in ownership is a transfer which has all three of the following characteristics:

- It transfers a present interest in real property.
- It transfers the beneficial use of the property.
- The property rights transferred are substantially equivalent in value to the fee interest.

The Legislature adopted this definition in Revenue and Taxation Code Section 60. Following the recommendation of the Task Force, the Legislature also included specific examples in Section 61 of transfers constituting a change in ownership and specific examples in Section 62 of transfers not constituting a change in ownership.

Joint Tenancy – Original Transferor Status. Section 65 details change in ownership law as it applies to the creation, transfer, or termination of joint tenancy interests in property. Subdivision (b) of Section 65 excludes from change in ownership the creation of a joint tenancy or the transfer of joint tenancy interests if, after such creation or transfer, the transferors are among the joint tenants. In such a creation or transfer, the transferors become the “original transferors” and any subsequent transfer or termination of the joint tenancy interest will not result in a change in ownership if the interest vests entirely or in part in one or more of the original transferors. When the last original transferor’s interest terminates, then there is a change in ownership of the entire property. (Rev. & Tax. Code §65(c))

The importance of "original transferor" status under Section 65(b) is that it determines the change in ownership consequences of future transfers of the joint tenants' interests in the property. As long as a person with "original transferor" status remains on title, the property will not be reassessed. Property Tax Rule 462.040 provides that co-owners of real property may become "original transferors" in the following ways:

- A & B take title to property as tenants in common -- then transfer to A & B as joint tenants; A & B become original transferors.
- A & B take title to property as joint tenants -- then A & B transfer to their revocable trusts for the benefit of each other, as joint tenants; A & B become original transferors**.**
- A transfers title to A & B as joint tenants -- A becomes an original transferor but not B. However if B transfers to his revocable trust for the benefit of A -- B becomes an original transferor.

Principal Place of Residence. Article XIII, Section 3(k) of the California Constitution exempts from property tax the first $7,000 of the full value of a dwelling when occupied by an owner as his principal residence. This exemption is commonly referred to as the "homeowners' exemption." Section 218 of the Revenue and Taxation Code details the qualifications for the homeowners' exemption. The homeowners' exemption is applied to a person's principal place of residence and eligibility is generally continuous once granted. It does not apply a property owner's vacation or secondary home. A home receiving the homeowners' exemption which is subsequently vacated and rented out to others loses it's eligibility for the exemption beginning with the next lien date. A homeowner's temporary absence from his or her home does not disqualify the home from being considered the person's continuous principal place of residence provided the home is not rented or leased to others as detailed in Letter to Assessor's 82/50. Thus, for instance, if a person was hospitalized or confined to a convalescent home, the home would still be considered to be that person's continuous principal place of residence even if a relative or friend occupies the home in the capacity of a caretaker while the owner is away. Further, a person that spends weekends at a second home, resides in an apartment during the work week, or travels extensively would not disqualify the home from being considered that person's principal place of residence and eligible for the exemption.

BACKGROUND

Change in Ownership Exclusions. As previously stated, the term "change in ownership" was not defined by Proposition 13. Certain definitional "exclusions," including the interspousal exclusion, were embodied in the initial statutory definitions necessary to implement Proposition 13's change in ownership provisions. Thereafter, four other exclusions were statutorily provided as noted below.

BILL	YEAR	CHANGE IN OWNERSHIP EXCLUSION	R&T CODE
AB 1488	1979, Ch. 242	Numerous definitional exclusions • Change in method of holding title • Perfecting title • Security interests • Certain trusts • Retained life estates • Certain joint tenancies • Certain leases	§62 (a) – (g), §65
AB 1488	1979, Ch. 242	Interspousal Transfers – including marriage dissolutions (subsequently amended into Constitution via Prop. 58)	§63
AB 2718	1982, Ch. 911	Parent to Minor Child Upon Death of Parent - Residence	§62(m)
AB 2890	1984, Ch. 1010	Parent to Disabled Child - Residence	§62(n)
AB 2240	1984, Ch. 1692	Purchases of Mobilehome Parks by Residents	§62.1, §62.2
SB 565	2005, Ch. 416	Registered Domestic Partners	§62(p)
SB 559	2007, Ch. 555	Registered Domestic Partners – Retrospective for 2000-2006 transfers	§62(p)

Since Proposition 13, the Constitution has been amended twice to provide for additional change in ownership exclusions for certain family transfers. These transfers will not trigger a reassessment of the property to current fair market value. Instead, the property retains its prior base year value.

PROP.	ELECTION	CHANGE IN OWNERSHIP EXCLUSION	R&T CODE
58	Nov. 6, 1986	• Parent-Child • Interspousal: But, *statutorily* provided since 1979	§63, §63.1
193	March 26, 1996	Grandparent–Grandchild	§63.1

Similar legislation previously before the Legislature, but not enacted, to exclude certain transfers from change in ownership, either through constitutional amendment or statutory amendment, include:

BILL	YEAR	CHANGE IN OWNERSHIP EXCLUSION
AB 1419	1981	Transfers between family members – spouse, brother, sister, lineal ancestor, or lineal issue.
ACA 8	1987	Transfers of principal place of residence between siblings who live together two years prior.
ACA 55	1988	Transfers of principal place of residence between siblings who live together two years prior.
SCA 9	2002	Transfers of principal place of residence between co-owners who resided together for three years - County optional.
SCA 5	2003	Transfers of principal place of residence between co-owners who resided together for three years - County optional.
AB 205	2003	As introduced, stated that California has no legitimate state interest in denying rights related to tax laws, including, "nonreassessment of real property upon a spouse's death" to registered domestic partners.
AB 23	2003	Would have codified provisions to modify "original transferor" status as it relates to joint tenancy exclusions.

Additionally, a "Save Proposition 13" constitutional initiative amendment sponsored by Howard Jarvis in 1984, would have, among other things, excluded certain family transfers from change in ownership. That proposition failed to obtain voter approval.

PROP.	ELECTION	CHANGE IN OWNERSHIP EXCLUSION
36	Nov. 6, 1984	Transfers from the owner to parents, grandparents, grandchildren, stepparents, uncles, aunts, spouses, stepchildren, siblings, and lineal descendants.

Therefore, as detailed in the tables above, some change in ownership exclusions are contained in statute, while others are contained in the Constitution. Additionally, it should be noted that in specific instances where the same person continues to own or reside in the property these exclusions have been statutorily authorized. For example, instances such as the interspousal exclusion, placing property in a trust, creating a life estate, or purchasing the land under one's mobile home are all examples of statutorily authorized exclusions.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by Equality California to create a change in ownership exclusion for co-owners of principal places of residence in the event of one co-owner's death. With this bill, the Proposition 13 protected value of the home would be preserved. Thus, the surviving co-owner would continue to pay the same amount of property tax on the home after the other person's death.

2. **Amendments.** The **August 8, 2008** amendment made a technical change as suggested in our analysis to strike the word "residence" in reference to the "disabled veterans' exemption." **The July 5, 2008** amendments (1) limited the exclusion to deaths occurring between January 1, 2009, and January 1, 2019, (2) required the cotenants to have been owners of record of the residence for at least one year prior to the death, and (3) required the survivor cotenant to sign an affidavit, under penalty of perjury, affirming that the property was the principal residence of both cotenants

immediately preceding the transferor cotenant's death and both continuously resided at that residence for the one-year period immediately preceding the date of death.

3. **The proposed change in ownership exclusion would apply to any number of situations where two people own a principal place of residence and one person dies leaving interest in the property to the other.** For example, seniors, veterans, or others who own a home together and choose not to marry because of the loss of various benefits; persons who choose not to marry for other reasons or may be unable to marry legally; persons who choose not to register as domestic partners; persons ineligible to register as domestic partners; persons with familial relationships, such as siblings or other relations; friends or companions; a person and his or her care provider; or any two people who live together to share the cost of housing would qualify.

4. **For co-owners that have owned and lived in their home for a number of years, a partial or full reassessment of the property to its current fair market value after one co-owner dies can result in a significant increase in property taxes.** A fundamental argument for Proposition 13 was that a person would not be "taxed" out of his or her home for as long as he or she continued to reside in it and would not be forced out of his or her home due to property taxes on the home becoming unaffordable if taxed at its current market value.

5. **The reassessment consequences in these situations depend upon the facts of each case.** When the transfer between the decedent and the survivor does not qualify for any of the change in ownership exclusions available under existing law, the property must be reassessed. The percentage of reassessment to current market value, which will be determined as of the date of death, depends upon the form of ownership as well as other factors as detailed below:

   Tenants in Common. In the case of real property held as tenants in common, a transfer of interest between the decedent and the survivor that had equal ownership interests in the property would be subject to a 50% reassessment. If the parties did not have equal ownership, then the percentage reassessment would be equal to the amount of the decedents' ownership interest in the property transferred to the survivor.

   Joint Tenancy. In the case of real property held in a joint tenancy, the percentage of the property subject to reassessment would either be 0%, 50% or 100% as noted below:

   - If the surviving joint tenant had original transferor status*, then no reassessment would occur.
   - If the surviving joint tenant did not have original transferor status, a 50% reassessment would occur.
   - If the surviving joint tenant had been added to the title of the home after the decedent had first acquired the home and the surviving joint tenant did not thereafter obtain original transferor status, a 100% reassessment would occur. This is because no reassessment occurred at the time when the decedent initially added the survivor to the property's title as a joint tenant.

   *When a person has "original transferor status" a termination of a joint tenancy interest does not result in a change in ownership of the property when the surviving joint tenant becomes the sole owner of the property by rights of survivorship if the surviving tenant is an original transferor. (Rev. & Tax. Code §65(d))

6. **The exclusion would only apply to transfers of property resulting from a death.** Transfers of interests in property between co-owners at other points in time would result in reassessment of the property if no other exclusion is available.
7. **The exclusion would only apply to a principal place of residence**. With respect to other types of real property jointly owned by the parties, such as a rental home or a commercial property, the property would be subject to reassessment if no other exclusion is available.
8. **The exclusion would not apply in the situation where two people shared a principal residence, but the survivor was not on title to the property**. If no other exclusion is available, a 100% reassessment to current market value will occur. Furthermore, both persons must have been owners of record for at least one year prior to the death.
9. **The exclusion would only apply in the situation where two people are on title to the property**. For example, in the case of a principal residence owned together by two unmarried persons and a child of one or both persons is also on title with a 1% interest, the exclusion would not apply.

COST ESTIMATE

The Board would incur some minor absorbable costs in informing local county assessors, the public, and staff of the law changes and prescribing the required claim form.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Based on data provided by the Assessor-Recorder of the City & County of San Francisco, Board staff estimates that annually there would be between 100 and 700 transfers affected by this bill statewide.

The estimate is based on data that includes:

- Transfers that are not eligible for a change in ownership exclusion under current property tax law. Inter-spousal transfers, parent-child transfers, grandparent-grandchild transfers, and transfers between registered domestic partners were excluded from the data since such transfers are not subject to this bill because they are already eligible for other exclusions.
- Transfers where the property was owned by two individuals with 100 percent ownership interest prior to the transfer, or where the individual listed as the primary owner prior to the transfer had less than 100 percent ownership interest.
- Transfers that were subject to a “change in ownership” reassessment following the death of one of the owners.
- No adjustments are made in this estimate for partial reassessments because they are effectively included in the range of transfers estimated to be impacted by this bill.

The average assessed value of properties receiving the homeowners' exemption in 2007 was $300,371. The median home price in December 2007, according to the California Association of Realtors, was $475,460. The estimated amount of assessed value difference per home is then [$475,460 - $300,371], or $175,089. The total amount of affected value can be computed by multiplying the estimated number of affected principal residence transfers by the assessed value difference:

Number of transfers		Total affected value	Basic property tax rate	Revenue impact
100	x $175,089	$17,508,900	x 1%	$175,089
700	x $175,089	$122,562,300	x 1%	$1,225,623

REVENUE SUMMARY

The revenue loss under this bill at the basic 1 percent property tax rate is between $175,000 and $1.2 million.

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