



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date Amended:	06/23/05	Bill No:	SB 599
Tax:	Property	Author:	Machado
Related Bills:			

BILL SUMMARY

This Board of Equalization sponsored bill would:

- Expressly provide that the claims filed by taxpayers for the parent-child change in ownership exclusion and base year value transfers for seniors and the disabled are not public documents and not subject to public inspection.
- Provide, for purposes of the grandparent-grandchild change in ownership exclusion, that a son-in-law or daughter-in-law of the grandparent that is a stepparent to the grandchild need not be deceased in meeting a condition that “all of the parents” of the grandchild, as defined, must be deceased.

Summary of Amendments

The June 23 amendments to Section 69.5 add a Board sponsored provision that would allow a grandparent to grandchild change in ownership exclusion if a son-in-law or daughter-in-law, who is the stepparent to the grandchild, is still living.

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.” (Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60 - 69.7)

Article XIII A, Sec 2 of the California Constitution and Section 63.1 of the Revenue and Taxation Code exclude from the definition of change in ownership transfers of certain property between parents and children occurring on or after November 6, 1986. Specifically, transfers between parents and children of:

- principal places of residences and
- the first \$1 million of real property other than principal residences.

The parent-child change in ownership exclusion may be extended to the transfer of real property from grandparents to their grandchild if **all of the parents** of that grandchild **who qualify as the children of the grandparents** are **deceased** as of the date of transfer. The grandparent-grandchild exclusion is available to transfers of property occurring on or after March 27, 1996.

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The existing statutory eligibility for a parent-child transfer extends to transfers between stepparents and their stepchildren and between mother-in-laws or father-in-laws and their son-in-laws or daughter-in-laws. This expands the possible transfers of property between people who will be eligible for the parent-child change in ownership exclusion. However, an unintended consequence is that, for the grandparent-grandchild exclusion, it limits eligibility since all persons who qualify as a "child" of the grandparent must be deceased. Consequently, if a person has a stepparent that never remarried after the death of their parent, they are ineligible for the grandparent-grandchild exclusion because the stepparent is still considered a "child" of their grandparent and therefore not "all of the parents" of the grandchild that are children of the grandparent are deceased. There are situations where the stepparent has no relationship with, or is estranged from, the stepchild such as where the parent remarries when the child is an adult or where the stepparent is incarcerated. In these cases, because this stepparent is still living, the grandchild is precluded from receiving the exclusion on their grandparent's property.

Claims

Revenue and Taxation Code Section 408.2 provides, that except as provided in Section 451 (relating to property statements) and Section 481 (relating to change in ownership statements) any information and records in the assessor's office which are required by law to be kept or prepared, other than homeowners' exemptions, are public records and shall be open to public inspection.

In claiming either the parent-child change in ownership exclusion pursuant to Section 63.1 or the base year value transfer provisions of Section 69.5 for persons over the age of 55 years, taxpayers must provide their social security numbers on the claim form they file with their local county assessor. Social security numbers are the basis by which claims for these two tax benefits are monitored on a statewide basis by the Board of Equalization. With respect to the parent-child exclusion, taxpayers are limited to claiming the exclusion on the first one million dollars of real property transferred excluding principal places of residences. With respect to a base year value transfer, a taxpayer may claim the transfer only once in a lifetime.

Existing law is silent with respect to the confidentiality of claims filed by taxpayers pursuant to Sections 63.1 and 69.5.

Proposed Law

A. Grandparent-Grandchild Exclusion

This bill would amend subdivisions (a) and (c) of Section 69.5 to provide that the existence of a stepparent whose relationship to the grandparent in question is as a daughter-in-law or son-in-law (i.e., the widowed spouse of the grandparent's child) would not disqualify the grandchild from receiving the change in ownership exclusion.

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B. Claims

Parent-Child Exclusion. This bill would add subdivision (i) to Section 63.1 to expressly state that a claim filed for the parent-child change in ownership exclusion is not a public document and is not subject to public inspection. In addition, it would expressly provide that certain persons may inspect the claim: namely, by the transferee and the transferor or their respective spouse, the transferee's legal representative, the transferor's legal representative, and the executor or administrator of the transferee's or transferor's estate.

Base Year Value Transfers. This bill would add subdivision (n) to Section 69.5 to expressly state that a claim filed for a base year value transfer is not a public document and is not subject to public inspection. In addition, it would expressly provide that certain persons may inspect the claim: the transferee and the transferor or their respective spouse, the transferee's legal representative, the transferor's legal representative, and the executor or administrator of the transferee's or transferor's estate.

This bill would also amend Section 69.5(f)(1) to delete the need to provide the name and social security number of a spouse that was a record owner of the original property at the time of its sale. This requirement is the unintended result of the lack of triple joining language in three bills that amended Section 69.5 in 1990 which caused the extraneous phrase "was a record owner of the original property at the time of its sale or" to be in this section of code. In addition, it would expressly provide that certain persons may inspect the claim: the transferee and the transferor or their respective spouse, the transferee's legal representative, the transferor's legal representative, and the executor or administrator of the transferee's or transferor's estate.

Cross Reference Additions. This bill would amend Section 408.2 to add cross-references to Sections 63.1 and 69.5.

Legislative Findings and Declarations. As required by Section 3 of Article I of the California Constitution, this bill makes Legislative findings to demonstrate the interest protected by providing that these claim forms are not public documents and the need for protecting that interest:

Claims filed under Section 63.1 or Section 69.5 contain taxpayer sensitive personal information, including social security numbers, dates of birth, home addresses, home telephone numbers, marital status, adoption status, financial matters, and medical information. Notwithstanding Section 3 of Article I of the California Constitution, county assessors have a responsibility and an obligation to safeguard from public access a taxpayer's personal information with which it has been entrusted.

The right to privacy is a personal and fundamental right protected by Section 1 of Article I of the California Constitution and by the United States Constitution. All individuals have a right of privacy in information pertaining to them.

This state has previously recognized, in Section 408.2 of the Revenue and Taxation Code, the importance of protecting the confidentiality and privacy of

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an individual's personal and financial information contained in homeowners' exemption claims, property statements, and change of ownership statements filed with county assessors for property tax purposes.

In addition to the right of privacy, there is a need to protect from public disclosure personal information due to the growing prevalence and debilitating nature of identity theft.

It is not the intent of this measure to make confidential that a particular property has received a property tax benefit pursuant to Section 63.1 or Section 69.5 of the Revenue and Taxation Code, or the amount of the benefit, but only to protect the personal information contained in the claim form. In addition, the Legislature further finds that in determining the fiscal impact resulting from either of these provisions, county assessors may provide aggregated data on property in their counties that have been extended these property tax benefits.

In General

Under existing law, real property is generally reassessed to its current fair market value whenever there is a "change in ownership." (Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60 - 69.7) However, under certain circumstances property owners may avoid reassessment of a particular property by way of either a change in ownership exclusion or a base year value transfer.

Parent-Child Exclusion. Proposition 58, approved by voters on November 4, 1986, added subdivision (h) to Section 2 of Article XIII A of the California Constitution, to provide that the term "change in ownership" does not include the purchase or transfer between parents and their children of a principal residence and the first \$1 million of the full cash value of all other real property. Proposition 193 on the March 1996 ballot amended this section to apply the exclusion to transfers of real property from grandparents to grandchildren when all the parents of the grandchildren who qualify as children of the grandparents are deceased as of the date of transfer. By avoiding reassessment to current market value, children can preserve the Proposition 13 protected value of property acquired from their parents (or vice versa) and the property taxes on the property will remain the same.

Revenue and Taxation Code Section 63.1 provides the statutory implementation for Propositions 58 and 193. To receive the change in ownership exclusion, Section 63.1 requires the taxpayer to file a claim form with the assessor. Relevant to this bill, subdivision (d) of Section 63.1 requires that the social security number of each eligible transferor be provided on the claim form. Social security numbers are the basis by which the \$1 million limitation is monitored on a statewide basis. County assessors report quarterly to the Board all claims filed for the exclusion other than those involving a principal residence. Properties transferred after the \$1 million assessed value ceiling is reached are subject to reassessment at current market value.

Base Year Value Transfers. Proposition 60, approved by the voters in November 1986, amended Section 2 of Article XIII A of the California Constitution to allow persons

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over the age of 55 to sell a principal place of residence and transfer its base year value to a replacement principal place of residence within the same county. This allows eligible homeowners to avoid paying property taxes on their new home based on its current market value and instead preserve their Proposition 13 protected value of their prior home by transferring it to their new home. Proposition 90, which was passed by the voters in November 1988, extended these provisions to a replacement dwelling located in another county under limited conditions. Proposition 110, approved by the voters in June 1990, extended these provisions to severely and permanently disabled persons of any age.

Revenue and Taxation Code Section 69.5 provides the statutory implementation for Propositions 60, 90 and 110. It details the provisions by which persons over the age of 55 years and disabled persons may transfer, subject to many conditions and limitations, the base year value of their primary residence to a newly acquired replacement residence. This property tax relief is generally allowed only once in a lifetime. To receive the base year value transfer, Section 69.5 requires the taxpayer to file a claim form with the assessor. Relevant to this bill, subdivision (f) of Section 69.5 requires that the social security number of each claimant be provided on the claim form. Social security numbers are the basis by which the once in a lifetime benefit is monitored on a statewide basis. County assessors report quarterly to the Board all claims for base year value transfers.

Spouses of Claimants. As previously noted, the base year value transfer is a once in a lifetime benefit. To qualify Section 69.5(b)(7) requires that a “claimant” may not have previously received a base year value transfer. Section 69.5(g)(9) provides that the spouse of the claimant is deemed to have used their once in a lifetime benefit if the spouse is a record owner of the replacement dwelling. However, Section 69.5 (f)(1) incorrectly requires that the claim form include the social security number of any spouse of the claimant who was a record owner of the original property at the time of its sale in addition to the social security number of any spouse that is a record owner of the replacement dwelling. To properly administer Section 69.5(g)(9) the name and social security number of a spouse of a claimant is necessary only if he or she is a record owner of the replacement dwelling.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the Board to protect the disclosure of a taxpayer’s social security number and to ensure that the broad definition of “parent” for purposes of the parent-child change in ownership exclusion does not, as an unintended consequence, overly restrict eligibility for grandparent-grandchild change in ownership exclusion.
- 2. Key Amendments.** The **June 23** amendments add the provisions related to a living stepparent. The **June 16 amendments** expressly provide that certain persons may inspect the claim. These amendments were made at the request of the Trusts and Estates Law Section of the State Bar of California to ensure that these persons would have access to needed information. The Section was concerned that the bill as introduced would also prevent claimants and their representatives from gaining

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access to their own claim forms. The **April 26** amendments add legislative findings and declarations to demonstrate the interest protected by providing that these claim forms are not public documents and the need for protecting that interest, as required by Proposition 59, which was approved in November 2004. The amendment also adds cross references to Sections 63.1 and 69.5 to Section 408.2 which details other documents that are not public documents.

- 3. Claim Confidentiality.** The confidentiality of these forms is not expressly provided for in law. This bill would provide clarity to tax practitioners as well as interested parties that these documents are not public records subject to public inspection. Because claims for these property tax relief benefits contain taxpayer sensitive personal information, including social security numbers, dates of birth, home addresses, home telephone numbers, marital status, adoption status, financial matters, and medical information, the Board-prescribed claim forms include a statement that they are not subject to public inspection, although it is not expressly provided for in law. Recently, a county received a request for a copy of all claim forms filed under Section 69.5. The request was made under the Public Records Act, which caused the staff to evaluate whether, contrary to the statement on the claim form, these records must be provided to the inquiring party. Ultimately, the Board staff opined that these claims are exempt from public disclosure pursuant to the Information Practices Act, which was enacted to limit the dissemination of personal information. (It should be noted that the county was able to provide the inquiring party with the information it was seeking to derive from the individual claim forms, which was the revenue impact of intercounty base year value transfers, by providing aggregate data.)
- 4. This bill balances the general public's right to information and the individual's right to privacy.** As noted in the uncodified intent language, it is not the intent of this measure to make confidential that a particular property has received a property tax benefit pursuant to Section 63.1 or Section 69.5 of the Revenue and Taxation Code, or the amount of the benefit, but only to protect the personal information contained in the claim form. Additionally, in determining the fiscal impact resulting from either of these provisions, county assessors may provide aggregated data on property in their counties that have been extended these property tax benefits.
- 5. Names Listed on Claim Form - Technical Correction.** In 1990, three bills amended Section 69.5 (Statutes 1990, Chapters 902, 1487, and 1494). An amendment to Section 69.5(f)(1) made by Chapter 902 (AB 3723) was chaptered out thereby creating an inconsistency between the definition of claimant in subdivision (g)(9) and the claimant's information required to be reported on the claim form in Section 69.5(f)(1). This bill amends Section 69.5(f)(1) to restore the change made by AB 3723 that was inadvertently chaptered out.

COST ESTIMATE

This bill would require the Board to update the parent-child and base year value transfer claim. In addition, the Board would need to update informational materials related to the parent-child exclusion to reflect the changes in law. The Board routinely updates claim

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forms and informational materials and any associated costs are accommodated within the Board's existing budget. There are no other costs.

REVENUE ESTIMATE

The provisions relating to the grandparent-grandchild exclusion have an insignificant revenue impact. The other provisions have no revenue impact.

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