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No. 2021/026

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TO COUNTY ASSESSORS:

### **BASE YEAR VALUE TRANSFERS FOR GOVERNOR-PROCLAIMED DISASTERS**

Existing law allows three different types of base year value transfers for property owners whose real property was substantially damaged or destroyed by a disaster for which the Governor proclaimed a state of emergency.<sup>1</sup> Each of these provisions was enacted by Constitutional amendment and implemented by statute. This letter discusses these three base year value transfer provisions, as each has different qualifications for property tax relief.

On June 3, 1986, the voters of California approved Proposition 50, adding subdivisions (e) and (f) to section 2 of article XIII A of the California Constitution to allow the transfer of the base year value of real property that is substantially damaged or destroyed by a disaster for which the Governor proclaims a state of emergency to comparable replacement property located within the same county. These provisions are implemented by Revenue and Taxation Code (RTC) section 69.

On November 2, 1993, California voters approved Proposition 171, which amended section 2(e) of article XIII A, to allow the base year value of a principal residence substantially damaged or destroyed in a disaster for which the Governor proclaims a state of emergency to be transferred to a replacement principal residence located in another county, provided that the replacement residence is located in a county that has adopted an ordinance to accept such base year value transfers.<sup>2</sup> These provisions are implemented by RTC section 69.3.

On November 3, 2020, California voters approved Proposition 19, which added section 2.1 to article XIII A, to allow, as relevant here, an owner of a primary residence who is a victim of a wildfire or natural disaster to transfer the taxable value of their original primary residence to a replacement primary residence that is purchased or newly constructed as that person's principal residence within two years of the sale of the original primary residence. Proposition 19 became operative as of April 1, 2021.

<sup>1</sup> A list of these disasters is posted on the State Board of Equalization's website at [www.boe.ca.gov/proptaxes/disaster-list.htm](http://www.boe.ca.gov/proptaxes/disaster-list.htm). This list is updated when we become aware of any new proclamations.

<sup>2</sup> As of May 10, 2021, the following 14 counties have ordinances allowing intercounty disaster base year value transfers: Contra Costa, Glenn, Los Angeles, Modoc, Orange, San Diego, San Francisco, Santa Clara, Solano, Sonoma, Sutter, Ventura, Yolo, and Yuba (see Letter To Assessors No. 2021/017).

Proposition 19, as enacted, is unclear whether its base year value transfer provisions supersede the sections 69 and 69.3 base year value transfers. However, after review, we believe any of these three base year value transfers are available to property owners with properties substantially damaged by a disaster for which the Governor proclaimed a state of emergency.

The following table provides a quick reference to the disaster relief base year value transfer provisions:

Code Section	Property Type	Must sell damaged property	Time Period to Purchase or Newly Construct Replacement	Value Test	Operative Date
RTC Section 69	All property types	No	5 years from disaster date	120% *	07/01/1985
RTC Section 69.3	Principal place of residence	No	3 years from disaster date	Equal or lesser value	10/20/1991
CA Const. Art. XIII A, section 2.1(b)	Principal place of residence	Yes	2 years from sale date	100% *	04/01/2021

\* *Partial relief available if market value of replacement property exceeds value test.*

The specific requirements for each type of disaster relief base year value transfer provision are as follows:

### **RTC Section 69 (Proposition 50)**

RTC section 69 allows an owner of real property, whose property had been substantially damaged or destroyed in a disaster, to transfer the base year value of the damaged property to a comparable replacement property acquired or newly constructed *in the same county* (intracounty). This base year value transfer is available for any type of real property, as long as the damaged property and the replacement property are of the same property type.<sup>3</sup>

The specific requirements of RTC section 69 include the following:

- The disaster must result in a Governor-proclaimed state of emergency.
- The replacement property must be located in the **same county** as the original property.
- The replacement property must be acquired or newly constructed within **five** years after the disaster.<sup>4</sup>
- The replacement property must be comparable to the destroyed property.
- Only the owner(s) of the property substantially damaged or destroyed obtaining title to replacement property is eligible for property tax relief.

<sup>3</sup> See Letter To Assessors No. 92/45

<sup>4</sup> For disasters that occurred prior to July 1, 2003, a replacement property must have been acquired or constructed within three years of the disaster.

- If the base year value is transferred under section 69, the new construction exclusion under RTC section 70 or 170 is not available.

The replacement property is considered *comparable* if it is similar in size, utility, and function to the damaged or destroyed property. Property is similar in *size* and *utility* if the full cash value of the acquired property does not exceed 120 percent of the full cash value of the damaged or destroyed property in its pre-damaged condition. If the full cash value of the replacement property exceeds 120 percent, the excess above 120 percent is subject to reassessment to current full cash value, either at the time of acquisition or upon completion of new construction, as applicable.

Property is similar in *function* if the replacement property is subject to similar governmental restrictions, such as zoning. The replacement property must be used in the same manner as the damaged or destroyed property. Properties are similar in use if they fall within the same broad property type (e.g., residential, commercial, agricultural, industrial). Any portion of the replacement property that is not similar in function is subject to reassessment to current full cash value, either at the time of acquisition or upon completion of new construction, as applicable.

**Example:** Single-family residences, duplexes, triplexes, and apartments—all residential properties—would be considered similar in function. Properties would be considered dissimilar only if their uses crossed over into different property types. Thus, if a home is destroyed and a combination convenience store and residence is purchased as a replacement, only the residence would be considered comparable to the destroyed property. Consequently, the base year value can be transferred to only the residential portion of the replacement property. The commercial portion (convenience store) would be subject to reassessment at current full cash value.

A damaged or destroyed manufactured home that is subject to property taxation<sup>5</sup> can be replaced with another manufactured home or with conventional housing and qualify for relief under section 69, and vice versa, provided that the replacement property meets the comparability test of size, utility, and function, and to the extent that it does not exceed the 120 percent value limitation.

The following describes the appropriate base year value to be applied to the replacement property:

- If the full cash value of the replacement property does not exceed 120 percent of the full cash value of the property prior to damage, then the entire adjusted base year value of the pre-damaged property will be transferred to the replacement property as its base year value.
- If the full cash value of the replacement property exceeds 120 percent of the full cash value of the property prior to damage, then the entire adjusted base year value of the pre-damaged property will be transferred to the replacement property, but the full cash value of the amount exceeding 120 percent will be added to the adjusted base year value of the pre-damaged

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<sup>5</sup> A licensed manufactured home is not eligible for a base year value transfer because it has no base year value.

property. The sum of these amounts will be the new base year value of the replacement property.

- If the full cash value of the replacement property is less than the adjusted base year value of the property prior to damage, then that lower value will be the base year value of the replacement property.

The damaged property does *not* need to be sold in order to transfer the base year value. At the time the adjusted base year value of the damaged property is transferred to the replacement property, the substantially damaged or destroyed property is reassessed at its full cash value; however, the property also retains its adjusted base year value. There has been no event (change in ownership or completion of new construction) that would trigger the establishment of a new base year value. Since the damaged property will retain its original adjusted base year value, the new taxable value for the damaged property will be the lower of its current full cash value or the adjusted base year value. In other words, an Assessor should evaluate the damaged property for a decline in value at the time its base year value is transferred to the replacement property. If the damaged property is later reconstructed, the land will retain its adjusted base year value, but the new construction will be assessed at current full cash value and a new base year value for the improvements will be established upon the date of completion.

**Example:** A property is destroyed in a wildfire. Its adjusted base year value at the time of the disaster is \$553,456 (land \$102,734, improvements \$450,722). The full cash value of the destroyed property just prior to the disaster was \$800,000. The full cash value of the land after the disaster is \$250,000, and the full cash value of the improvements is \$0. A replacement property was purchased six months after the disaster for \$820,000. A claim was filed and the adjusted base year value of \$553,456 was transferred to the replacement property. Even though the base year value of the destroyed property was transferred to the replacement property, the assessed value of the destroyed property (land) will reflect the adjusted base year value of \$102,734 (the lower of the retained adjusted base year value or current full cash value).

Property that is acquired prior to the date of the disaster is not eligible as a replacement property. However, if an owner of property that has been substantially damaged or destroyed constructs a new home on vacant land that was already owned, the newly constructed home may qualify if the completion date is within five years of the date of the disaster and the full cash value of the improvements on the date of completion meets the value comparison test.

Only the owner of substantially damaged or destroyed property is eligible for relief. Owners may be individuals, or they may be partnerships, corporations, or other legal entities. However, the acquisition of an ownership interest in a legal entity that owns real property is not an acquisition of comparable property. For example, if two persons owned property as joint tenants and that property was substantially damaged or destroyed, relief under section 69 is not available if a legal entity owned by the joint tenants acquires property as a replacement for the damaged or destroyed property. However, such acquisition would qualify if the legal entity had originally owned the damaged or destroyed property.

A taxpayer may not receive relief under both RTC sections 69 and 70 (new construction exclusion) for the same damaged or destroyed property. For example, if the owner of damaged or destroyed property receives relief under section 69 by transferring the base year value of the damaged property to a replacement property, then the damaged property will no longer be eligible for the new construction exclusion under subdivision (c) of section 70 in the event the owner later reconstructs the damaged property.

For administrative purposes, the State Board of Equalization has prescribed a claim form<sup>6</sup> for property owners to use to request an intracounty disaster base year value transfer. The claim is available from and filed with the Assessor.

### **RTC Section 69.3 (Proposition 171)**

RTC section 69.3 allows a homeowner whose principal place of residence is damaged or destroyed in a disaster to transfer the base year value of the pre-damaged residence to a replacement property acquired or constructed in another county (intercounty).<sup>7</sup>

Specific requirements of RTC section 69.3 include:

- The disaster must result in a Governor-proclaimed state of emergency.
- Both the damaged or destroyed property and the replacement property must be the principal place of residence of the person claiming the relief.
- Either the land or improvements must have sustained physical damage amounting to more than 50 percent of its current market value immediately prior to the damage.
- The county where the replacement property is located must have enacted an ordinance implementing section 69.3.<sup>8</sup>
- The replacement property must be acquired or newly constructed within **three** years after the damage to the original property.
- In general, the current market value of the replacement property must be *equal to or less than* the market value of the damaged property immediately prior to the damage. A replacement property is considered comparable if its full cash value does not exceed one of the following:
  - **One hundred five percent** of the full cash value of the original property immediately prior to the disaster (including any inflation factor adjustments) if the replacement property is purchased or newly constructed *within the first year* following the date of the damage or destruction of the original property
  - **One hundred ten percent** of the full cash value of the original property immediately prior to the disaster (including any inflation factor adjustments) if the replacement

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<sup>6</sup> BOE-65-P, *Claim for Intracounty Transfer of Base Year Value To Replacement Property for Property Damaged or Destroyed in a Governor-Declared Disaster*.

<sup>7</sup> See Letter To Assessors No. 95/16.

<sup>8</sup> As of May 10, 2021, the following 14 counties have adopted ordinances pursuant to RTC section 69.3: Contra Costa, Glenn, Los Angeles, Modoc, Orange, San Diego, San Francisco, Santa Clara, Solano, Sonoma, Sutter, Ventura, Yolo, and Yuba (see Letter To Assessors No. 2021/017).

- property is purchased or newly constructed *within the second year* following the date of the damage or destruction of the original property.
- **One hundred fifteen percent** of the full cash value of the original property immediately prior to the disaster (including any inflation factor adjustments) if the replacement property is purchased or newly constructed *within the third year* following the date of the damage or destruction of the original property.
  - A claim<sup>9</sup> for relief must be filed with the Assessor of the county in which the replacement property is located. The claim must be filed within **three** years after the replacement property is acquired or newly constructed.

A principal residence is a person's true, fixed, and permanent home and principal establishment to which the owner, whenever absent, intends to return. If a homeowners' exemption has not been granted on the property, the Assessor may ask for proof of residency. Proof of residency may include vehicle registration, voter registration, bank accounts, or income tax records.

"Original property" and "replacement property" are defined as land and a structure or other place of abode that may be either real or personal property. For manufactured homes, only a manufactured home on a permanent foundation<sup>10</sup> can qualify as the original property, but all manufactured homes can qualify as a replacement property if the manufactured home is subject to property taxation and meets all the provisions of comparability specified by the statute.<sup>11</sup> A damaged or destroyed manufactured home can be replaced with conventional housing and qualify for relief under section 69.3 and vice versa.

Property, including land, that is acquired prior to the date of the disaster is not eligible as a replacement property.<sup>12</sup>

"Owner or owners" is defined as an individual or individuals. Partnerships, corporations, or other legal entities that own real property do not qualify for relief under section 69.3. Moreover, the acquisition of an ownership interest in a legal entity that owns real property is not considered an acquisition of a replacement property. Even though this section does not make any reference to trusts, property "owned" by a trust is eligible for this property tax relief if the property is held by a qualified individual as the trustor or present beneficiary of the trust.

Only the owner or owners of the property that has been substantially damaged or destroyed may receive property tax relief. For example, if a sole owner of a destroyed original property purchased a property as a replacement property together with a second party who was not an owner of the original property, the base year value of the original property could not be transferred to that replacement property under section 69.3. The reason is that someone other than the owner of the original property would receive the property tax relief pursuant to section 69.3.

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<sup>9</sup> BOE-65-PT, *Claim for Intercounty Transfer of Base Year Value to Replacement Property From Principal Residence Damaged or Destroyed in a Governor-Declared Disaster*.

<sup>10</sup> Pursuant to Health and Safety Code sections 18551 or 18555.

<sup>11</sup> Property Tax Annotations 200.0040 and 200.0041.

<sup>12</sup> Letter To Assessors No. 95/16.

The damaged property does *not* need to be sold in order to transfer the base year value. At the time the adjusted base year value of the damaged property is transferred to the replacement property, the substantially damaged or destroyed property is reassessed at its full cash value; however, it also retains the adjusted base year value. There has been no event (change in ownership or completion of new construction) that would trigger the establishment of a new base year value. Since the damaged property will retain its original adjusted base year value, the new taxable value for the damaged property will be the lower of its current full cash value or the adjusted base year value. In other words, an Assessor should evaluate the damaged property for a decline in value at the time its base year value is transferred to the replacement property. If the damaged property is later reconstructed, the land will retain its adjusted base year value but the new construction of the improvements will be assessed at full cash value and a new base year value for the improvements will be established upon the date of completion of the new construction.

### **Section 2.1 of Article XIII A of the California Constitution (Proposition 19)**

Operative as of April 1, 2021, section 2.1(b) of article XIII A allows an owner of a primary residence who is a victim of a wildfire or natural disaster to transfer the taxable value of their primary residence (original primary residence) to a replacement primary residence that is purchased or newly constructed as that person's principal residence within two years of the sale of the original primary residence, regardless of the location or value.<sup>13</sup>

The specific requirements of section 2.1(b) include:

- The wildfire or natural disaster must result in a Governor-proclaimed state of emergency.
- The original primary residence improvements must have sustained physical damage amounting to more than 50 percent of its full cash value immediately prior to the wildfire or natural disaster.
- The damaged or destroyed property must have been the principal place of residence of the claimant as of the date that property was substantially damaged or destroyed.
- The original primary residence must be sold in its damaged state.
- The replacement primary residence must be purchased or newly constructed within **two** years of the sale of the original primary residence.
- The replacement primary residence may be located anywhere in California.
- The replacement primary residence must be the principal place of residence of the claimant.
- A claim<sup>14</sup> for relief must be filed with the Assessor of the county in which the replacement property is located. The claim must be filed within **three** years of the purchase or new construction of the replacement property to receive relief as of the latest

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<sup>13</sup> For further information on Proposition 19, please see Letters To Assessors Nos. 2020/061 and 2021/019.

<sup>14</sup> BOE-19-V, *Claim for Transfer of Base Year Value to Replacement Primary Residence for Victims of Wildfire or Other Natural Disaster*.

qualifying transaction. If this period is missed, prospective relief is available for the lien date of the assessment year in which the claim is filed.<sup>15</sup>

The purchase of the replacement primary residence must occur within two years of the sale of the original primary residence in its damaged state. The date of the misfortune or calamity does not have to occur within two years of the date of sale or the date of purchase. For example, if a principal residence was destroyed in 2017 and the vacant lot sold in 2021, the property owner would have two years from the 2021 sale date to purchase a qualifying replacement primary residence.

For property that has been damaged or destroyed, the base year value that is transferred is the adjusted base year value immediately prior to the date of damage or destruction of the original primary residence, plus any inflation factoring for the period between the destruction and the purchase of the replacement primary residence. The date the base year value is transferred is the date of the latest qualifying transaction—the sale of the original primary residence, the purchase of the replacement primary residence, or the completion of new construction of a new replacement primary residence.

Proposition 19 provides that if the full cash value of the replacement primary residence on its date of purchase or completion of new construction is *equal or less* than the full cash value of the original primary residence just prior to the date of disaster, then the adjusted base year value of the original primary residence just prior to the date of disaster, plus any applicable inflationary adjustments, is transferred to the replacement primary residence. However, if the full cash value of the replacement primary residence is *greater than* the full cash value of the original primary residence, then the difference in the two full cash values is added to the transferred adjusted base year value.

If you have any questions regarding any of these disaster relief base year value provisions, please contact the County-Assessed Properties Division at 916-274-3350.

Sincerely,

/s/ David Yeung

David Yeung  
Deputy Director  
Property Tax Department

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<sup>15</sup> Article XIII A, section 2.1(b)(4); and RTC section 69.5(f).