California State
Board *of* Equalization

Legislative Enrolled Bill Analysis

Legislative and Research Division

Assembly Bill 1378 (Holden)
Program: Property Tax
Sponsor: Howard Jarvis Taxpayers Association
Revenue and Taxation Code Section 69.5
Effective: Immediately, but applies to claims filed on after 1/1/16.

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Summary: Allows spouses to each make separate base year value transfer claims related to the one-time only benefit provided to persons 55 years and over that move from one home to another.

Purpose: To discontinue treating a married couple that buys a home as a single claimant and thereby allow every person, as an individual, the opportunity to receive a one-time base year value transfer.

Fiscal Impact Summary: Annual property tax revenue loss of $350,000.

Existing Law: For property tax purposes, real property is reassessed from its Proposition 13 protected value (called a "base year value") to its current market value whenever a change in ownership occurs.[1] Subject to many conditions, the law[2] allows homeowners 55 years and older to sell their home and buy or build a new one and transfer their base year value, provided the new home is of equal or lesser value and located in the same county.[3] This benefit gives homeowners "property tax relief" by allowing property taxes to remain essentially the same if they move to a new home.[4] The law provides the same benefit to homeowners without regard to age if the homeowner becomes severely and permanently disabled and the disability requires a move to a new home.

One-Time Benefit. Eligibility for this benefit consists of many requirements. Relevant to this bill, the "claimant" cannot have previously received this "property tax relief."[5] The law defines a claimant as any person claiming the property tax relief.[6] The law also considers a spouse who shares title of the newly purchased home with the "claimant" to be a "claimant."

Statewide Tracking Database. To monitor and enforce the one-time base year value limit statewide, the law[7] requires the Board of Equalization (BOE) to maintain a database to track persons granted a base year value transfer. When married persons file a claim to transfer the base year value of their current home to a newly purchased home to which they share title, their names and social security numbers are entered in the database. This ensures that neither person will be allowed a future transfer.

Spouses under 55. Married persons under 55 years of age may transfer the base year value of a home that is separate property, provided the spouse is 55 or older and also resided in that home.[8]

Nondisabled spouse. The law allows nondisabled persons to transfer the base year value of a home that is their separate property, provided their disabled spouse also resides on that property.

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[1] California Constitution Article XIII A, Sec. 2.
[2] California Constitution Article XIII A, Sec. 2 (a), Revenue and Taxation Code (RTC) Section 69.5.
[3] In addition, ten counties offer this property tax benefit to new county residents. Each county has the discretion to accept 'intercounty" transfers. Those with active enabling ordinances are: Alameda, El Dorado, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, and Ventura.
[4] The property tax bill is not identical because the precise tax rate and direct levies (special assessments, parcel taxes, etc.) differ for each home's location.
[5] RTC Section 69.5(b)(7). The law allows a second base year value transfer if the person previously granted a base year value transfer subsequently becomes disabled and files a disability-based claim.
[6] RTC Section 69.5(g)(9).
[7] RTC Section 69.5(b)(7).
[8] RTC Section 69.5(b)(3) and (f)(1)(B).

Proposed Law: **Spouses on Title.** This bill deletes all provisions in law that requires a claimant's spouse to also be a claimant for a base year value transfer.[9] The revision applies prospectively to claims filed on or after January 1, 2016.[10] Prior claimant's spouses already entered into the database remain ineligible. By not treating both spouses as "claimants," this bill allows each person the opportunity to make a separate, one-time claim.

Spouses under 55. This bill deletes the provision that allows a person under age 55 who owns the home being sold as separate property to transfer the value of that home to the new jointly-owned home.[11]

Disabled persons. This bill limits eligibility for a disability-based transfer to a disabled person who is on title to both homes. Currently, residing in both homes is the only requirement.

Legislative Background: Similar provisions have been before the Legislature in California Assessors' Association sponsored bills:

- In 2009, AB 321 (Niello) was held in the Assembly Appropriations Committee.
- In 2008, AB 2579 (Niello) was held in the Senate Appropriations Committee.

In General: **Property Tax System.** In 1978, voters changed California's property tax system with the approval of Proposition 13. Under Proposition 13, property is reassessed to its current market value only after a change in ownership or is newly constructed. Generally, the sales price of a property is used to set the property's assessed value, and annual increases to that value are limited to the rate of inflation, not to exceed 2%.

Base year Values. At the time of the ownership change, the value for property tax purposes is redetermined based on current market value. This established value is described as the "base year value." Thereafter, the base year value is subject to annual increases for inflation limited to 2% per year. This value is described as the "factored base year value." This system, established by Proposition 13, can result in substantial property tax savings for long-term property owners.

Base Year Value Transfers. Voters have approved three constitutional amendments permitting persons to "transfer" their Proposition 13 base year value from one home to another that is of equal or lesser value. The base year value transfer avoids reassessment of the newly purchased home to its fair market value.

- **Intracounty.** In 1986, Proposition 60[12] amended the constitution to allow persons over the age of 55 to sell a principal residence and transfer its base year value to a replacement principal residence within the same county.
- **Intercounty.** In 1988, Proposition 90[13] amended the constitution to extend these provisions to a replacement residence located in another county on a county-optional basis. Currently, ten counties accept transfers from homes located in another county.
- **Disabled Persons**. In 1990, Proposition 110[14] amended the constitution to extend these provisions to any severely and permanently disabled person regardless of age.

The constitution provides, in pertinent part:

> [T]he Legislature may provide that under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property that is eligible for the homeowner's exemption … and any implementing legislation may transfer the base year value of the property entitled to exemption … to any replacement dwelling

[9] RTC Section 69.5(b)(7), (f)(1)(A), and (g)(9).
[10] Proposed RTC Section 69.5(p).
[11] RTC Section 69.5 (b)(3) and (f)(1)(B).
[12] Proposition 60, approved November 4, 1986.
[13] Proposition 90, approved November 8, 1988.
[14] Proposition 110, approved June 5, 1990.

> of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. For purposes of this section, **"any person over the age of 55 years" includes a married couple one member of which is over the age of 55 years…**
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> The Legislature may extend the provisions . . . to severely disabled homeowners.

RTC Section 69.5 implements all three propositions.

The BOE's Assessors' Handbook Section 401 *Change in Ownership* Chapter 14 at page 106 provides more details, and the BOE's website includes FAQ's for both Proposition 60/90 and Proposition 110.

BOE Annotation 200.0020 "Claimant (New Spouse)" describes how marriage to someone who previously received a transfer can disqualify a person from receiving a transfer. The annotation reads:

> Revenue and Taxation Code section 69.5(b)(7) provides that a claimant for property tax relief under section 69.5 may not have previously been granted such relief. In addition, section 69.5(g)(9) defines "claimant" for purposes of the section to include the spouse of a person who previously claimed relief under section 69.5 if that spouse is a record owner or co-owner of the replacement dwelling. Thus, if A and B are married and record owners of property which has received the benefits of section 69.5, then neither A nor B are eligible for future benefits under that section. Furthermore, if (1) A and B divorce, (2) A marries C and (3) A and C become co-owners of record of C's replacement dwelling, C will not be eligible for relief under the section with respect to that dwelling since A also would be a claimant for purposes of C's claim. C 8/26/1987.

Commentary:

1. **This bill allows a married couple to move their base year value twice**. Under this bill, a married couple could transfer their tax base from a larger family home to a smaller home and later to a condo. Existing law already allows unmarried co-owners and registered domestic partners to carry over the same tax base twice.[15] Current law does not require co-owners that are registered domestic partners or unmarried to both be listed on the transfer claim.
2. **Married couples are essentially treated as a single claimant and are limited to one transfer (or barred from a transfer if one spouse previously received a transfer).** Other co-owners are treated individually and can each get one transfer for a total of two transfers.
3. **Supporters note that couples over the age of 55 move more frequently than prior generations.** They state this measure will help ensure that senior, married couples are not hit with significant property tax increases during their retirement years.
4. **The once-in-a-lifetime provision is a statutory limitation.** The constitution does not limit the number of base year value transfers one person may receive. The Legislature imposed this limit and accordingly, may modify it.[16]
5. **Treating both spouses as claimants is a statutory requirement.** The constitution does not require both spouses to be claimants. It does, however, specify that "any person over the age of 55 years" *includes* a married couple where only one person is over 55. Therefore, the constitution prohibits the Legislature from disallowing a transfer due to a spouse being under the age of 55.

[15] The same tax base need not be transferred; each person is eligible to receives a base year value transfer from any home they once owned.

[16] For co-owners, registered domestic partners, and married couples that subsequently qualify as disabled and must move as a result, the same tax base could carry over up to four times.

6. **Base Year Value Transfer Example.** Base year value transfers allow eligible homeowners to preserve the Proposition 13 value of their prior residence by transferring it to the new residence. To qualify, a person must buy or build a home of equal or lesser value and sell the old home so it will be reassessed to its current value. For example, if Homeowner A sells House A for $400,000 ($250,000 tax base) and buys House B for $350,000, the following occurs:
   - House A is reassessed to $400,000
   - House B is reassessed to $250,000
   - Homeowner A pays the same base amount of taxes $2,500 ($250,000 x 1%) and avoids the $1,000 property tax increase to $3,500 ($350,000 x 1%).
   - House A's property tax increases by $1,500 ($400,000 – $250,000 x 1%)
   - House B's property tax could either increase or decrease as it depends upon the former owner's tax base.
7. **Generally, selling and buying a new home will result in a property tax increase.** Some homeowners do not move due to the property tax consequences. Some homeowners must move and cannot avoid the resulting property tax increase. For homeowners over the age of 55, and persons who become disabled, as long as the new home's value is equivalent, a base year value transfer negates the property tax consequences of moving within the same county, or to one of the ten other specified counties.
8. **A person under the age of 55 would no longer be eligible to file a claim.** Under current law, a person who is under the age of 55 may be a claimant if he or she *resides* with a spouse who is over 55. The age-qualifying spouse need not be a current owner of record of either the original or replacement property. With this bill, residency by an over-55 spouse will no longer suffice to permit transfer of the base year value. To qualify, the over-55 spouse must file the claim and be a recorded owner of both homes.
9. **A person who is married to a permanently disabled person would no longer be eligible to file a disability transfer claim.** Under current law, a non-disabled person who is under the age of 55 may be a claimant if he or she *resides* with a spouse who is permanently disabled; under these circumstances, the disability-qualifying spouse need not be an owner of record of either the original or replacement property. With this bill, residency by a disabled spouse will no longer suffice to permit transfer of the base year value. To qualify, the disabled-spouse must file the claim and be a recorded owner of both homes.
10. **Any person currently in the database would be ineligible.** Since 1986, in the case of a married couple, the names of both spouses have been entered into the statewide database to ensure that neither person is allowed a future base year value transfer. Each spouse was a “claimant” under the law when the claim was filed. This bill changes the “claimant” definition prospectively and applies to persons making first-time claims after January 1, 2016. Consequently, any person granted a base year value transfer and listed in the database, will be barred from making a second base year value transfer under the changes proposed by this bill.

Administrative Costs: The BOE would incur absorbable costs to update claim forms, publications, and the website to reflect the law change.

Revenue Impact: BOE property tax statistics indicate that counties grant an average of 5,000 base year value transfer claims each year. It is difficult to determine this bill’s immediate impact; however, assuming a five percent increase would result in 250 additional qualified transfers annually (5,000 x 5%).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.

According to the California Association of Realtors, the median home price in December 2014 was \$453,780. The 2013-14 average assessed value of a property receiving the homeowners' exemption was \$314,464. Therefore, the estimated amount of assessed value difference per home after a base year transfer is about \$140,000 (\$453,780 - \$314,464).

The total revenue loss is computed by multiplying the estimated number of qualified transfers by the assessed value difference at the basic 1 percent property tax rate:

250 qualified transfers x \$140,000 x 1% = \$350,000

This bill would reduce property tax revenues at the basic 1 percent tax rate by \$350,000 annually. Since this bill is prospective and doesn't apply to anyone previously deemed to be a claimant because they were a spouse, this amount could grow over time as the number of potential claimants increases each year.

Qualifying Remarks. Generally, for a claimant to be eligible for the property tax relief described, there must be a transfer of the original property; i.e. a change in ownership subjecting the original property to reappraisal at its current fair market value. This revenue estimate does not account for the change in the assessed value to the original property.

The revenue impact may be greater to the extent that market values return to previous peak levels.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.