STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Amended:	**03/24/09**	Bill No:	**AB 157**
Tax:	**Property**	Author:	**Anderson**
Related Bill:			

BILL SUMMARY

This bill would increase from 5 years to 7 years the timeframe a property owner has to acquire or construct a property to replace one damaged or destroyed in a Governor-declared disaster and remain eligible to receive a base year value transfer.

ANALYSIS

CURRENT LAW

Revenue and Taxation Code Section 69 provides tax relief to persons who own property substantially damaged or destroyed in a Governor declared disaster. Among the various requirements and conditions, the base year value of the damaged property may be transferred to a comparable property within the same county within 5 years of the date the disaster occurred.

PROPOSED LAW

This bill would amend Revenue and Taxation Code Section 69 to extend the number of years to acquire a replacement property from 5 to 7 years for disasters occurring on or after July 1, 2007, and for the Cedar Fires which occurred in October 2003 in San Diego County.

IN GENERAL

Disaster Relief. There are a variety of provisions in property tax law to provide property tax relief for disaster victims. These provisions address both the short term and the long term consequences of the disaster as it relates to current and future property tax liabilities. In the short term, property tax liability is redetermined to reflect the damage to the property. Additionally, some taxpayers may defer the next property tax installment payment. Over the long term, property owners may rebuild or repair damaged properties without incurring any increase in property tax liability. Alternatively, property owners may relocate rather than rebuild without being adversely impacted by the property tax consequences. The various provisions that provide property tax relief for disaster victims in the Revenue and Taxation Code are as follows:

DISASTER RELIEF REFERENCE CHART

Section	Property Type	Type of Relief Available	Type of Disaster
170	All property types	Assessment reduction	Any disaster or calamity
194 & 194.1	Real property and manufactured homes	Property tax deferral – next installment	Governor-proclaimed
195.1	Real property and manufactured homes	Property tax deferral – second consecutive installment	Governor-proclaimed
194.9	Real property and manufactured homes	Property tax deferral – supplemental assessment	Governor-proclaimed
69	All property types	Base year value transfer	Governor-proclaimed
69.3	Principal place of residence	Base year value transfer	Governor-proclaimed
69.5	Principal place of residence —over 55 or physically disabled	Base year value transfer	Any disaster or calamity
172 & 172.1	Manufactured home	Base year value transfer	Governor-proclaimed
70	Real property only	New construction exclusion	Any disaster or calamity
5825	Manufactured home	New construction exclusion; Base year value transfer	Any disaster or calamity

Property Tax System. California's system of property taxation under Article XIII A of the State Constitution (Proposition 13) values property at its 1975 fair market value, with annual increases thereafter limited to the amount of inflation or 2%, whichever is less, until the property changes ownership or new construction occurs. Once a reassessable event occurs (i.e., a change in ownership or new construction), the value of the property for tax purposes is redetermined based on its current market value. The value initially established, or redetermined where appropriate, is referred to as the "base year value."

Because real estate values generally appreciate at a rate greater than 2% per year, when an event occurs triggering a reassessment of property to its current market value, the reassessed value (i.e., its new base year value) will likely be substantially higher.

California property tax law provides for various situations where the base year value of a property is either: (1) retained, notwithstanding that new construction has taken place or that the property has changed ownership, or (2) transferred to another property, notwithstanding that the property has changed ownership. These special situations are provided pursuant to various constitutional amendments modifying the original Proposition 13 framework and serve to avoid the otherwise required reassessment of a property to its current market value.

New Construction Exclusion. For instance, related to the subject matter of this bill, Revenue and Taxation Code Section 70(c) provides that "where real property has been damaged or destroyed by misfortune or calamity, 'newly constructed' and 'new construction' does not mean any *timely* reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction." Any reconstruction of real property, or portion thereof, that is not substantially equivalent to the damaged or destroyed property, is treated as new construction. If this occurs, then only that portion that exceeds what is deemed to be substantially equivalent reconstruction would be assessed at current market value. Section 70(c) does not provide any time limitation as to what is considered "timely" new construction for purposes of the exclusion.

Under this provision, however, reconstruction that does qualify means that the property will retain its previous assessed value after its reconstruction. Consequently, a property that is rebuilt after a fire will continue to be assessed at the same amount even though the property has been entirely newly constructed. (This new construction exclusion was provided by Proposition 8 in 1978).

Base Year Value Transfers. Specifically related to this bill, Section 69 provides that persons who own property substantially damaged or destroyed in a Governor-declared disaster may transfer the base year value of that property to a property acquired or constructed as a replacement if it is acquired within five years after the disaster. "Substantially damaged" means physical damage amounting to more than 50 percent of its current market value immediately prior to the damage. Base year value transfers are available for all property types, with the limitation that the original property and the replacement property must be of the same property *type*: residential, commercial, agricultural, or industrial. The replacement property is "comparable" if it is similar in size, utility, and function to the destroyed property, and if the market value of the acquired property does not exceed 120% of the fair market value of the replaced property in its pre-damaged condition. Property owners may, nevertheless, still receive the disaster relief in cases where the value of the replacement property exceeds the 120% limitation. In such cases, the amount over this threshold is assessed at full market value and added to the transferred base year value. (Proposition 50 of 1986 authorized this base year value transfer provision.)

Section 69.3 provides similar disaster base year value transfer provisions but, unlike Section 69, which applies to all property types, it is limited to principal places of residences purchased in another county and only applies to homes purchased in counties where the board of supervisors has adopted an ordinance making this benefit available. Additionally, replacement homes must be purchased within 3 years rather than 5 years. As of 2008, there are nine counties that have such an ordinance: Contra Costa, Los Angeles, Modoc, Orange, San Francisco, Santa Clara, Solano, Sutter, and Ventura. (Proposition 171 in 1995 authorized this base year value transfer provision.)

BACKGROUND

In 2006, **AB 1890** (Stats. 2006, Ch. 317; Mountjoy) extended the timeframe for Section 69 base year value transfers from 3 years to 5 years for all disasters occurring on or after July 1, 2003. Prior to that, in 1993, **AB 1824** (Stats. 1993, Ch. 1053) extended the timeframe from 2 years to 3 years for all disasters occurring on or after October 20, 1991, the date of the Oakland hill's fire. In 1997, **SB 594** (Stats. 1997, Ch. 941) provided a special 5 year timeframe for any victim of the 1994 Northridge earthquake.

COMMENTS

1. **Sponsor and Purpose.** The author is sponsoring this bill to ensure that affected property owners have sufficient time to acquire a suitable replacement property.
2. **Base year value transfers provide tax relief to disaster victims.** Permitting a persons to "transfer" their base year value from one property to another property provides tax relief by allowing the property owner to continue paying taxes on the replacement property equivalent to that paid on the property from which they were displaced. Without a base year value transfer, the taxes on the new property would likely be significantly more because, under the general change in ownership laws, the taxes would be based on the property's current fair market value. The rationale for providing a base year value transfer is that the tax laws should not further afflict disaster victims by imposing upon them higher property taxes. If the disaster had not occurred, those individuals would not have been compelled to relocate and thereby forfeit their Proposition 13 protected base year values.
3. **The 5 year timeframe is a statutory limitation.** The constitution provides that the Legislature shall provide for these types of base year value transfers and Section 69 is the implementing statute. Article XIII A, Section 2(e) of the California Constitution does not expressly authorize the Legislature to establish time requirements for acquiring a replacement property within the same county. It may be more appropriate to establish time periods that do not unnecessarily exclude taxpayers from receiving the benefits otherwise available. A more liberal time period could prevent constitutional challenges to establishing any time limit.
4. **Five years might not be enough time.** While most property owners will likely fit into the existing 5 year period, the financial impact to the individual property owner that doesn't can be significant. Delays occur for a variety of reasons: unsettled insurance claims, uninsured or underinsured property owners, limited supply of replacement properties available for purchase, and lack of construction workers. This is especially true where the disaster creates mass destruction in a localized area. And in present times, there are added reasons for delays, such as difficulties in obtaining financing or purchasers that are experiencing unprecedented delays in completing the purchase of a bank-owned home.
5. **This bill does not amend the 3 year timeframe for Section 69.3 base year value transfers because of constitutional constraints.** Section 69.3 provides similar tax relief for replacement principal places of residence located in a different county. However, the 3 year time limit is expressly specified in the constitutional provision authorizing these types of transfers. Consequently, to extend this timeframe would require a constitutional amendment.
6. **The new construction exclusion of Section 70(c) for disaster victims has no express time limit other than the reconstruction be "timely."** Thus, property tax administrators have flexibility in determining what is "timely" depending on the facts of the situation. Section 70(c) applies to persons that rebuild on the original site after a disaster. Section 69 applies where a person buys another property to replace the one damaged.

COST ESTIMATE

The Board would incur some minor absorbable costs in informing and advising county assessors, the public, and staff of the law changes.

REVENUE ESTIMATE

According to San Diego County Assessor's Office, very few property owners are still seeking a base year value transfer from the Cedars Fire of 2003.

We estimate that statewide the number of disaster victims still seeking a base year value transfer in the fifth through seventh years after any disaster will be fewer than 10 per year. We assume that all of these transfers will be for single family homes and the revenue loss per base year value transfer granted is estimated to be $1,000 per property. Thus, the annual revenue loss for this bill is estimated to be $10,000.

Analysis prepared by:	Rose Marie Kinnee	(916) 445-6777	05/13/09
Contact:	Margaret S. Shedd	(916) 322-2376	

0157-1rk.doc

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 Board's formal position.