STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Introduced:	**02/18/09**	Bill No:	**AB 321**
Tax:	**Property**	Author:	**Niello**
Related Bills:			

BILL SUMMARY

This bill would allow spouses the opportunity to make separate claims for a base year value transfer.

In addition, this bill would eliminate the need for a property owner that has been granted a base year value transfer to notify an assessor within 30 days of completing otherwise assessable new construction in order to exclude the additional value under the original claim.

ANALYSIS

CURRENT LAW

Under existing law, real property is generally reassessed to its current fair market value whenever there is a "change in ownership." 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. (California Constitution Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60 - 69.5)

Section 69.5 of the Revenue and Taxation Code provides that persons over the age of 55 may transfer their base year value from one home to another when they purchase a new home of equal or lesser value that is located in the same county. Additionally, seven counties (Alameda, Los Angeles, Orange, San Diego, San Mateo, Santa Clara, and Ventura) permit persons to transfer base year values from homes located in other counties. This once-in-a-lifetime benefit gives seniors "property tax relief" by avoiding the reassessment provisions of Proposition 13. Instead, by transferring the Proposition 13 protected value from one home to another, there is essentially no change in the amount of property taxes paid. These provisions are also available to persons without regard to age if they become severely and permanently disabled.

One Time Benefit. Section 69.5 details the many conditions for qualifying for a base year value transfer. Relevant to this bill, one condition is that the property tax relief resulting from a base year value transfer has not been previously received by the person requesting the transfer.

Specifically, Section 69.5(b)(7) provides that any person claiming a base year value transfer is eligible only if the "claimant" has not previously been granted, as a claimant, the property tax relief provided by a base year value transfer, unless that person has subsequently become severely and permanently disabled and is basing the new claim upon the disability. A "claimant" is defined in Section 69.5(g)(9) as any person claiming the property tax relief provided by a base year value transfer and if that person has a spouse, and that spouse is a record owner of the new home, then that spouse is also considered to be a claimant for purposes of determining whether in any future claim

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filed by the spouse, he or she has been deemed to have already received the tax relief of a base year value transfer.

The Board of Equalization is required by law to maintain a database of all persons that have been granted property tax relief via a base year value transfer to enforce the one time limitation on a statewide basis. Thus, when a person that is married makes a claim and both persons are on title to the new home, both names are entered into the statewide database to ensure that neither person is allowed a base year value transfer in the future.

New Construction – Post Transfer. Section 69.5(h)(4)(A) provides that after a base year value transfer has been granted, the homeowner can make improvements to the new home, such as a room addition or a swimming pool, and in some cases, the new construction will not be assessed. The new construction will not be assessed if (1) the construction is completed within two years of the sale of the former home and (2) the value of the new construction plus the market value of the replacement home when purchased does not exceed the market value of the original property as determined for the original claim for a base year value transfer. To exempt the new construction from assessment, the property owner must have notified the assessor in writing within 30 days after completion of the new construction. Typically, this notification is done by filing another claim.

PROPOSED LAW

One Time Benefit. This bill would amend Section 69.5(g)(9) to instead provide that a spouse of a claimant who is a record owner of a new home is **not** to be considered a claimant and add new subdivision (o) to specify that the revisions to the definition of "claimant" is prospective (applying to claims filed on or after January 1, 2010). It also makes conforming provisions related to spouses throughout the text of the section. By not treating married persons as a single claimant, this bill would allow each person the opportunity to make a separate one time claim.

New Construction – Post Transfer. This bill would amend Section 69.5(h)(4)(A) to delete the provision that the property owner notify the assessor when the additional new construction is complete within 30 days of completion. Because the assessor already receives copies of all building permits issued in the county, this amendment allows the assessor to automatically extend the benefit of the base year value transfer to the new construction, when applicable, without any further action or paperwork from the property owner.

IN GENERAL

Under Proposition 13, property is reassessed to its current market value only after a change in ownership. 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 of the property for property tax purposes is redetermined based on current market value. The value initially established is referred to as the "base year value." Thereafter, the base year value is subject to annual increases for inflation, but at no more than 2% per year. This value is referred to as the "factored base year value." This system, established by Proposition 13, results 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.** Proposition 60, approved by the voters on November 4, 1986, amended Section 2 of Article XIII A of the California Constitution to allow persons 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.
- **Intercounty.** Proposition 90, approved by the voters on November 8, 1988, extended these provisions to a replacement residence located in another county on a county optional basis. Currently seven counties accept transfers from outside their county.
- **Disabled Persons**. Proposition 110, approved by the voters on June 5, 1990, extended these provisions to severely and permanently disabled persons of any age.

Section 69.5 of the Revenue and Taxation Code provides the statutory implementation for all three of these propositions.

BACKGROUND

AB 2579 (Niello) from 2008 proposed identical provisions. That bill was held in the Senate Appropriations Committee.

COMMENTS

1. **Sponsor and Purpose.** The California Assessors' Association is sponsoring this bill to rectify provisions in law obstructing seniors from fully realizing the intended property tax benefit of base year value transfers. This bill contains detailed legislative findings and declarations as to its purpose.
2. **Base Year Value Transfers Extend Proposition 13 Protections.** Base year value transfers allow eligible homeowners to preserve the Proposition 13 protected value of their prior residence by transferring it to the new residence. This allows a homeowner who qualifies to continue to pay the same amount of property taxes if the homeowner moves. For example, with a base year value transfer, a senior can sell her home for $400,000 (which has an assessed value of $100,000) downsize to a new home purchased for $350,000 and the assessed value of the new home will be set at $100,000 rather than $350,000. One condition to receive the base year value transfer is that the former home must be sold to trigger a reassessment of that property to its current market value. In this example, the assessed value of the former home will increase from $100,000 to $400,000 due to the change in ownership.
3. **Statutory Limitation.** Base year value transfers were authorized via constitutional amendment by the voters of California (i.e., Propositions 60, 90, and 110). The once-in-a-lifetime provision is a statutory limitation as no such limitation is provided for in the Constitution. Furthermore, the concept that spouses be treated as a single claimant is also a statutory provision. Therefore, there is no constitutional limitation on changing the definition of "claimant" via statutory amendment.

4. **In practical application, this bill would allow a married couple to move their base year value twice.** For example, as empty nesters, a married couple could sell the family home and buy a home in an active adult community and at a later point in life, sell that home and buy a condominium. The base year value from the family home would be transferred first to the active adult community home and then later to the condominium. To maximize the benefit of a base year value transfer, the husband would file a claim in his name for the first home and then the wife would file a claim in her name for the second claim. Additionally, because existing law allows a person to claim a base year value transfer due to age and then again for a subsequent disability, up to four base year value transfers might be allowed if each spouse makes an age-based claim and then a disability-based claim.

5. **Life Changes - Deaths and Divorces.** In the case where a married couple receives a base year value transfer, and later one spouse dies, there may be a need for the surviving spouse to move again to either downsize or move closer to family. With this bill, assuming that the spouse that died filed the first claim, the surviving spouse could move without a negative property tax financial impact.

   In the case when a married couple buys a home, they can not receive a base year value transfer if one of the spouses was previously married and received a base year value transfer on a home he or she owned in the prior marriage. This is the case even if the base year value being transferred is from a home solely owned by the other spouse and that spouse has never received a base year value transfer. Because of this inequity, some taxpayers have resorted to a multiple step process in which they:

   - file a quit claim deed to remove the name of the spouse that previously benefited from a base year value transfer from the home's title,
   - claim the base year value transfer under the name of the other spouse, and
   - then file another deed to add the spouse back on to the property's title.

   With this bill, the spouse that owned the home from which the base year value is being transferred, and who has never benefited from a base year value transfer, will be able to exercise his or her once-in-a-lifetime opportunity to receive this property tax benefit.

6. **A person under the age of 55 who is married to someone over that age or permanently disabled would no longer be an eligible claimant.** 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 or permanently disabled; under these circumstances, the age-qualifying spouse or the disability-qualifying spouse does not have to be an owner of record of either the original or replacement property. With this bill, the claimant will have to be at least 55 or permanently disabled and be a record owner of both homes.

7. **Any person currently in the database would not be able to make another claim under this bill.** Since 1986, in the case of a married couple, both persons have been entered into the statewide database to ensure that neither person is allowed a base year value transfer in the future – as each was a "claimant" under the law at the time that particular claim was made. This bill changes the definition of "claimant" on a prospective basis, meaning that it would only apply to those persons making a

claim for the first time after January 1, 2010. Because this bill is prospective, any person who has already been granted a base year value transfer, and is therefore currently in the database, will not be able to make a second base year value transfer under the changes proposed by this bill.

8. **New Construction – Post Base Year Transfer.** Current law requires taxpayers to take certain steps to exclude additional new construction from assessment. These steps are unnecessary. Further, the extra steps, when not done, only serve to block taxpayers from receiving the benefit. Because the assessor already receives copies of all building permits issued in the county, then with this bill, the assessor can automatically extend the benefit of the base year value transfer to the new construction, when applicable, without any further action or paperwork from the property owner.

COST ESTIMATE

The Board would incur some minor absorbable costs in informing local county assessors, the public, and staff of the law changes and making appropriate changes to the claim forms.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Based on an extensive analysis of electronic data files containing county information on various types of base year value transfers, we estimate that over the last 5 years approximately 6,900 base year value transfers were granted annually.

Because this bill is prospective, there would be no revenue impact in the first year. Staff estimates that in future years and over the long term, allowing spouses the opportunity to make separate claims for a base year value transfer would increase the number of annual claims being filed by about five percent, or 345 claims (6,900 x 5%).

The median home price in December 2008, according to the California Association of Realtors, was $281,180, or 40 percent lower than the December 2007 median home price of $475,460. This dramatic drop in the median price had a significant affect on the average revenue loss per transaction. When the proposed base year value transfer is claimed, the estimated amount of assessed value difference per home is $100,000. Assuming that it will take at least ten years before the additional claims being filed reaches 345 claims, the revenue impact over the first ten years would be:

Fiscal Year	Additional Base Year Value Transfers	Average Revenue Loss Per Transfer	Estimated Revenue Impact
2010-11	0	$1,000	0
2011-12	38	$1,000	$38,000
2012-13	76	$1,000	$76,000
2013-14	114	$1,000	$114,000
2014-15-	152	$1,000	$152,000

Fiscal Year	Additional Base Year Value Transfers	Average Revenue Loss Per Transfer	Estimated Revenue Impact
2015-16	190	$1,000	$190,000
2016-17	228	$1,000	$228,000
2017-18	266	$1,000	$266,000
2018-19	304	$1,000	$304,000
2019-20	345	$1,000	$345,000

As for the proposed change in the filing requirement upon completion of new construction, we do not know the actual number of change in ownership exclusions that would be affected by this bill. Consequently, it is difficult to estimate the decrease in property tax revenues with any degree of certainty.

REVENUE SUMMARY

This bill would initially have no revenue impact. It would reduce property tax revenues at the basic 1 percent tax rate by $345,000 annually after 10 years. This amount would 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 above for a replacement dwelling, there must be a transfer of the original property by way of a change in ownership, subjecting that original property to reappraisal at its current fair market value.

In addition, the revenue impact may be greater to the extent that market values return to 2007 levels. The revenue impact would be affected by increases in both the number of affected transfers and the assessed value difference.

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