STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended:	**Enrolled**	Bill No:	**SB 1045**
Tax:	**Property**	Author:	**Committee on Revenue and Taxation**
Related Bills:			

BILL SUMMARY

This Board of Equalization (Board) sponsored bill:

- Related to the parent-child change in ownership exclusion, clarifies that a property need only be eligible for the homeowners' exemption, and not actually receiving the exemption, to qualify as a principal residence. *§63.1*
- Related to base year value transfers for the elderly and disabled, corrects terminology used in the list of persons who have access to the confidential claim forms by substituting the proper term of "claimant" and adds trustees. *§69.5*
- Related to the veterans' organization exemption, adds a cross reference to the organization clearance certificate issued by the Board that is necessary to obtain the exemption from the local assessor. *§215.1*

ANALYSIS

Parent-Child Transfers:
Principal Residences and the Homeowners' Exemption
Revenue and Taxation Code Section 63.1

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 XIIIA, Sec. 2; Revenue and Taxation Code Sections 60 - 69.5)

Proposition 58, which was approved by the voters of California in 1986, added subdivision (h) to Section 2 of Article XIII A of the California Constitution, and provides, in part, that the term "change in ownership" shall not include the purchase or transfer between parents and their children of:

- a principal residence,
- or the first $1 million of the full cash value of all other real property.

This "change in ownership exclusion" avoids reassessment of the property to its current market value. Consequently, children can preserve the Proposition 13 protected value of property acquired from their parents (or vice versa) allowing the property taxes on the property to remain the same after the transfer. There is no value limitation on a property that qualifies as a principal residence and its value does not count towards the

$1 million cap on the amount of the exclusion available to properties transferred between parents and children. Any property transferred after the $1 million assessed value ceiling is reached is subject to reassessment at current market value.

Proposition 193, which was approved by voters in 1996, amended Section 2 of the Constitution 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.

Revenue and Taxation Code Section 63.1 provides the statutory implementation for both Propositions 58 and 193.

Principal Residence – Homeowners' Exemption Status. Relevant to this bill, subdivision (b)(1) of Section 63.1 defines a "principal residence" as a dwelling for which a homeowners' exemption (or a disabled veterans' exemption) has been *granted* in the name of the eligible transferor. To receive the homeowners' exemption, which provides an exemption of $7,000 of assessed value, a property owner need only file a one-time claim with the county assessor. The qualifications for the homeowners' exemption are set forth in Section 218 of the Revenue and Taxation Code (Section 205.5 for the disabled veterans' exemption).

Grandparent – Grandchild Transfers. Section 63.1(d)(1)(A) requires a transferee to make a written certification attesting to the familial relationship when filing a claim for the change in ownership exclusion. Relevant to this bill, under the terms of Section 2(h)(2)(A) and (B) of Article XIII A of the California Constitution, the grandparent-grandchild exclusion only applies in one direction, that is a transfer from a grandparent to a grandchild. In contrast, the parent-child exclusion applies to transfers in either direction, i.e. a child may transfer property to a parent and vice versa.

PROPOSED LAW

Principal Residence – Homeowners' Exemption Status. This bill amends Section 63.1(b)(1) to modify the definition of "principal residence" to mean a property that is *eligible* for the homeowners' exemption (or a disabled veterans' exemption) as a result of the transferor's ownership and occupancy of the dwelling. Thus, to be a "principal residence" the property in question must be eligible for the homeowners' exemption, but need not actually be receiving the exemption.

Grandparent – Grandchild Transfers. This bill also amends Section 63.1(d)(1)(A) related to the transferee's written certification as to the familiar relationship to delete an erroneous reference to "grandparent" since a grandparent is not an eligible transferee. (Also see definition of "eligible transferee" in Section 63.1(c)(7) which does not include a grandparent in the list of eligible transferees.)

COMMENTS

1. **Purpose.** This provision related to the homeowners' exemption is a housekeeping measure to ensure that property owners receive the full benefit of the parent-child change in ownership exclusion to which they are entitled. The provision related to

the written certification when claiming the grandparent-grandchild exclusion is made for purposes of technical precision.

2. **The June 27 amendment** modified the definition of "principal residence" in order to avoid repeating the phrase "principal residence" in its definition.
3. **This Codifies Administrative Practices**. Generally, the current administrative practice is that if the transferor, which is typically the parent, was not receiving the homeowners' exemption on their principal residence, but the taxpayer provides proper documentation that the property was nonetheless the transferor's principal place of residence, the assessor will grant the parent-child exclusion on the property as a principal residence.
4. **Principal Residences Don't Count Toward the Cap.** The benefit of receiving the exemption on a principal residence is that its value is not counted towards the $1 million limitation, in the event that there are other real property holdings to be transferred between the parents and children.
5. **Homeowners do not always claim the exemption to which they are entitled.** Some homeowners may never have filed a claim for the homeowners' exemption even if the property was their principal residence. This can occur because the homeowner is unaware of the exemption, misses a deadline, or moves from one of their previously owned homes to another owned home without changing the homeowners' exemption to the new home. In some instances, a homeowner may choose not to file for the exemption as the benefit is relatively minimal at $70 per year and requires the disclosure of social security numbers.
6. **Similar sections of law specify only "eligibility" for the homeowners exemption.** For instance, Section 69.5, which provides the statutory implementation for Proposition 60 (passed by the voters at the same time as the parent-child exclusion) and enacted in the same year as Section 63.1, requires that the original and replacement properties be *eligible* for the homeowners' or disabled veterans' exemption based on the ownership and occupation by the claimant as their principal residence. It is inconsistent to require the homeowners' exemption to be "granted" in Section 63.1 yet only require "eligibility" for the exemption in Section 69.5, which is a similar statute.

Base Year Value Transfers – Claim Forms
Revenue and Taxation Code §69.5

CURRENT LAW

Existing law provides that claims for the parent-child exclusion and base year value transfers for the elderly and disabled are not public documents and are not subject to public inspection except to an express list of persons with a relationship to the person who originally filed the claim, as specified. These provisions are found in Section 63.1(i) and Section 69.5(n), respectively.

Currently, both Sections 63.1(i) and 69.5(n) use identical language in referencing the express list of persons who may access the claim which is technically inaccurate. Specifically both sections use the terms transferee and transferor. But that language is only appropriate under Section 63.1 claims where the parent is the "transferor" and the

child is the "transferee" and both parties to the transfer of the property may need to access the claim form. With respect to Section 69.5 claims, the correct term would be "claimant."

PROPOSED LAW

This bill amends Section 69.5(n) to replace the terms transferee and transferor with the correct term "claimant." In addition, this bill would also provide that the trustee of a trust in which the claimant or the claimant's spouse is a present beneficiary may inspect the claim.

BACKGROUND

In 2005, the Board sponsored changes to Section 63.1 (parent-child change in ownership exclusion) and Section 69.5 (base year value transfers for the elderly and disabled) to expressly provide in statute that the claims taxpayers file to receive these property tax relief benefits are not public documents. These claims contain taxpayer sensitive personal information, including social security numbers, dates of birth, home addresses, home telephone numbers, marital status, adoption status, financial matters, and private medical information. (SB 555, Ch. 264, Stats. 2005)

The claim forms, which the Board prescribes for use in all of the counties, have always included a statement that they are not subject to public inspection. This statement was based on the opinion that the claims are exempt from public disclosure pursuant to the Information Practices Act, which limits the dissemination of personal information. The Board sought the legislative changes to expressly provide that the claims are not available for public inspection to ensure taxpayer confidentiality and avoid any uncertainty since both statutes were silent on the issue.

The original language contained in SB 555 was amended during the legislative process to address concerns raised by the Trusts and Estates Law Section of the State Bar of California to ensure that specified persons would have access to needed information contained in the claim forms. The State Bar Section was concerned that the bill, as introduced, would have prevented claimants and their legal representatives from gaining access to their own claim forms. Thus, amendments were taken to expressly list those persons who would have a right to access Section 63.1 and Section 69.5 claim forms. However, the amendments made to address these concerns inadvertently used the same language for both Section 69.5 and Section 63.1 which is technically inaccurate.

COMMENT

Purpose. This provision is purely technical. Section 63.1 relates to "transferees" and "transferors," but Section 69.5 should refer to "claimants" since there is no "transferee" and "transferor" in a Section 69.5 base year value transfer situation.

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.

Veterans' Organization Exemption
Revenue and Taxation Code Section 215.1

CURRENT LAW

Revenue and Taxation Code Section 215.1 provides for the exemption of all buildings, and the real property required for the convenient use and occupation of the exempt buildings, owned by a veterans' organization which has been chartered by the Congress of the United States and is organized and operated for charitable purposes. This exemption is popularly known as the "veterans' organization exemption" and it is jointly administered by the Board and the local county assessor.

Claims for the veterans' organization exemption are filed annually with the county assessor in the county in which the organization's property is located, as provided by Section 254.5. Claims are made on form BOE 269-AH (Claim for Veterans' Organization Exemption). The assessor may not grant a claim unless the veterans' organization holds an Organizational Clearance Certificate issued by the Board pursuant to Section 254.6.

PROPOSED LAW

This bill would amend Section 215.1 to add a reference to the organizational clearance certificate necessary to obtain the veterans' organization exemption.

BACKGROUND

Senate Bill 1062 (Ch. 471, Stats. 2003) and Senate Bill 1607 (Ch. 224, Stats. 2006) amended various statutory provisions related to both the welfare and the veterans' organization exemptions to streamline the administration of these exemptions by eliminating duplicative review functions performed by the assessors and the Board. After the streamlining, first effective with claims filed on or after January 1, 2004, the Board determines whether an organization is eligible to receive the veterans' organization exemption and the county assessor determines whether the use of the property is eligible for the exemption. If the Board determines that an organization is eligible, the Board issues an Organizational Clearance Certificate for the claimant to provide with exemption claim forms filed in any of the 58 counties where the veterans' organization might own property. Section 254.6(a) and (b) expressly provide that the Board staff review claims for organizational clearance certificates for the veterans' organization exemption and issue the certificates to organizations that meet the requirements of Section 214.

COMMENT

Purpose. This provision to add a specific reference to the required organizational clearance certificate would ensure that veterans' organizations seeking the exemption are aware of the need to obtain a certificate from the Board when filing a claim with the assessor. This is intended to make the tax codes more user friendly and ensure that the exemption is not unnecessarily delayed.

COST ESTIMATE

The Board would incur some minor absorbable costs in informing and advising county assessors, the public, and staff of the law changes and addressing ongoing implementation issues and questions. These costs are estimated to be under $10,000.

REVENUE ESTIMATE

This bill has no revenue impact.

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