STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Amended:	**06/05/08**	Bill No:	**SB 1233**
Tax:	**Property**	Author:	**Harman**
Related Bills:	**SB 1541 (Harman)**		

BILL SUMMARY

Related to the parent-child change in ownership exclusion, this bill would allow a county board of supervisors to authorize a processing fee of up to $175 to recover costs incurred in reassessing and then reversing the reassessment if an eligible person did not timely respond, as specified, to two written requests to file a claim for the exclusion.

ANALYSIS

CURRENT LAW

Under existing property tax law, property is reassessed to its current fair market value whenever there is a "change in ownership." However, a change in ownership exclusion is available for transfers of property between parents and children under certain conditions.

Revenue and Taxation Code Section 63.1 details the terms and conditions to receive the parent-child change in ownership exclusion. Relevant to this bill, one requirement is that the parties involved must file a claim form with the assessor certifying to the parent-child relationship and providing specified information.

Subdivision (e) of Section 63.1 outlines the periods within which to file a claim. It requires that the claim be filed within three years after the date of the transfer of real property or prior to the transfer of the real property to a third party, whichever is earlier. However, even if a claim is not filed within this stated filing period, a claim is considered timely if it is filed within six months after the date the assessor mails a notice of supplemental or escape assessment informing the taxpayer that the property will be reassessed. If a claim form is made within the above described periods, then the transfer is excluded from change in ownership as of the initial date the property was transferred (i.e., property tax refunds would be issued for past years if the property was previously reassessed).

A claim for the exclusion may still be filed at any time after the periods outlined above; however, the exclusion will only become effective for the lien date in the assessment year in which the claim form is filed and the exclusion will not be retroactive to the date of transfer. That is, if a claim is made after the customary filing periods, then the pre-reassessment value will be reinstated as of the year the claim form is finally filed (i.e. property tax refunds are not issued for past years, but future property tax bills will reflect the lower assessed value).

PROPOSED LAW

Failure to File Claim after Written Notifications. This bill would add subdivision (j) to Section 63.1 to allow county board of supervisors, pursuant to the provisions of Chapter 12.5 (commencing with Section 54985) of Part 1 of Division 2 of Title 5 of the Government Code, to authorize a one-time processing fee of no more than $175, to

recover costs incurred by the assessor for reassessment work done due to the failure of an eligible transferee to file a claim for the parent-child change in ownership after two written requests by the assessor.

A processing fee may be levied only if an eligible transferee had been previously sent two notices requesting that a claim be filed to which the transferee did not timely respond, as follows:

- **First Notice of Potential Eligibility.** The assessor must have notified the transferee in writing of potential eligibility for exclusion requesting that a claim be filed within 45 days of the date of the notice of potential eligibility.
- **Second Notice of Potential Eligibility.** If a claim is not subsequently filed within 45 days of the date of the first notice, the assessor must have sent a second notice of potential eligibility notifying the transferee that a claim has not been received and that reassessment of the property will commence unless a claim for exclusion is filed within 60 days of the date of the second notice of potential eligibility. The second notice must also indicate that if a claim is filed outside the 60-day period, then a processing fee may apply.

45 and 60 Day Filing Periods Relate to Potential Processing Fee. The failure of a transferee to file a claim for exclusion within the 45 and 60 day period specified above would have no effect on the granting of the exclusion. It would only impact whether or not an eligible transferee that eventually files a claim for the exclusion would be subject to the processing fee. An eligible transferee that files a claim outside of these time periods would still receive the exclusion either on a retroactive or prospective basis depending upon the timing of the claim and the filing provisions specified by subdivision (e) of Section 63.1.

IN GENERAL

Under existing property tax law, real property is reassessed to its current fair market value whenever there is a “change in ownership.” (California Constitution 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 who acquire real property from their parents (or vice versa) can preserve their’s parent’s Proposition 13 protected value since the exclusion allows the property taxes on the property to remain the same after the transfer. There is no value limitation on property that qualifies as a principal residence and the value of the principal place of residence does not count towards the $1 million cap on transfers of all other real property transferred between parents and their children. However, any real property transferred after the $1 million assessed value ceiling is reached is subject to reassessment at current market value.

Proposition 193, 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.

BACKGROUND

As originally enacted, Section 63.1 required that a claim form be filed to receive the change in ownership exclusion, but it did not place any time limitations on filing the claim. Assembly Bill 3020 (Ch. 769, Statutes of 1988) was enacted to require that a claim be filed within three years of the date of transfer. Subsequently, at the request of Stanislaus County, Assembly Bill 3843 (Ch. 1494, Stats. 1990) added a provision that claims must be filed prior to the transfer of the property to a third party. The purpose of this amendment was to eliminate the county's cost of preparing retroactive assessment roll corrections in this type of situation. Inevitably, the establishment of these filing periods led to some taxpayers being denied the reassessment exclusion because the claim was not filed "timely." This, in turn, led to the enactment of Senate Bill 675 (Ch. 709, Stats. 1993) to provide an additional six month period for the taxpayer to file a claim at the time he or she is notified of a supplemental or escape assessment issued as a result of a purchase or transfer of the property.

Notwithstanding the various changes of law intending to make the filing period for the exclusion more generous, some taxpayers continued to miss the filing periods. As a result Senate Bill 542 (Senate Revenue and Taxation Committee, Ch. 941, Statutes of 1997) was enacted to allow the parent-child exclusion to be granted on a prospective basis at any time once a claim was eventually filed. This was intended to ensure that taxpayers were not permanently barred from receiving a constitutionally authorized benefit due to a statutory requirement. It was reasoned that establishing liberal time periods for filing a claim for the exclusion would prevent future challenges that such time limitations on filing a claim are unconstitutional. Article XIII A, Section 2, subdivision (h), of the California Constitution is a self-executing change in ownership exclusion for parent-child transfers of real property and does not expressly authorize the Legislature to establish filing requirements. By providing prospective but not retroactive relief, it was further reasoned that SB 542 would conform to Section 6 of Article XIII of the California Constitution, which states: "The failure in any year to claim, in a manner required by the laws in effect at the time the claim is required to be made, an exemption or classification which reduces a property tax shall be deemed a waiver of the exemption or classification for *that year*." With SB 542, any person that had been previously denied the exclusion due to a late-filed claim was able to file another claim and receive the change in ownership exclusion on a prospective basis.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the California Assessors' Association. The purpose of establishing a processing fee is to create an incentive for property owners to timely respond to requests by the assessor to file a claim for the parent-child change in ownership exclusion so that property will not be reassessed to its current market value. The processing fee further serves to recover the administrative costs the county incurs in reassessing and later reversing the reassessment in those cases where an eligible taxpayer eventually files a claim for the parent-child exclusion, but only after the property was reassessed.

2. **Reassessment of property to current fair market values can result in a significant increase in property taxes.** Change in Ownership Statements (COS) and Preliminary Change in Ownership Reports (PCORs) filed with grant deeds transferring ownership of a property ask property owners whether the transfer was between parents and children. This question serves to inform property owners of the exclusion and the need to file a claim to receive the exclusion thereby avoiding reassessment of the property. Taxpayers that check this box on the COS or PCOR which have not yet filed for the exclusion are mailed a claim form to complete and file. Additionally, if the assessor has any reason to believe that parties may have a parent-child relationship such as the same last name on a deed or a property transferred without financial consideration, a claim will generally be mailed to the new property owner. Despite repeated inquiries, some taxpayers do not take action until they are faced with the financial impact of various tax bills reflecting the reassessment of the property which can be significant.

3. **Confusion over filing deadlines?** There may be some taxpayer confusion with the apparent contradiction of the 45 and 60 day filing periods listed on the two proposed notices of potential eligibility with the filing deadlines noted on claim form which would likely accompany the notice. The failure of a transferee to file a claim for exclusion within the 45 and 60 day periods specified would have no effect on a taxpayer's eligibility for the exclusion. Rather it solely determines whether or not an eligible transferee that eventually files a claim for the exclusion would be subject to the processing fee. An eligible transferee that files a claim would receive the exclusion either on a retroactive or prospective basis depending on the timing and filing provisions specified by subdivision (e) of Section 63.1.

4. **Establishing the Fee is County Optional.** The proposed processing fee must be authorized by the county board of supervisors.

5. **Imposing the Established Fee is Assessor Optional.** The fee would only apply if the assessor sends the two required notices. And neither notice is mandatory. Thus, the assessor may send none, one, or both notices to a taxpayer.

6. **Related Bills**. Similar provisions are included in SB 1541 (Harman) which was referred to the Senate Revenue and Taxation Committee but not heard.

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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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.