

Amend Section 69.4 of, and add Section 74.7 to, the Property Taxes Law to remove the new construction exclusion from Chapter 2, *Change In Ownership*, and add it to Chapter 3, *New Construction*.

Source: Property and Special Taxes Department and Legal Department

On November 3, 1998, the voters of California approved Proposition 1, thereby adding subdivision (i) to Section 2 of Article XIII A of the California Constitution. Upon implementation by the Legislature, this amendment allows one of two forms of property tax relief for qualified contaminated property. Specifically, property owners are able to choose from *either* of the following:

1. They may sell or otherwise transfer the qualified contaminated property and transfer its base year value to a replacement property of equal or lesser value. The replacement property must be acquired or newly constructed within five years *after* the sale or transfer of the qualified contaminated property. If the replacement property is located in a different county than the qualified contaminated property, then the county in which the replacement property is located must have passed a resolution accepting such base year value transfers.
2. If structures located on the qualified contaminated property are substantially damaged or destroyed in the course of the remediation of the environmental problems, the repair or replacement of such structures may be excluded from the definition of "new construction" provided that the repaired or replacement structure is similar in size, utility, and function to the original structure.

This relief applies to replacement property that is acquired or newly constructed on or after January 1, 1995, and to property repairs performed on or after that date.

Chapter 941 (Stats. 1999, SB 1231) added Section 69.4 to the Revenue and Taxation Code to provide the necessary Legislative implementation of the constitutional amendment. Since many of the specific conditions and limitations of this property tax relief are detailed in the constitutional language, the existing statutory language is brief. Additionally, both the new construction provision and the base year value transfer provision, which is essentially a change in ownership exclusion, were contained in one statute. Change in ownership exclusions (commencing with Section 60) are contained in Chapter 2 of Part 0.5 of Division 1 of the Property Taxes Law, while the new construction exclusions are contained in Chapter 3 (commencing with Section 70.)

Therefore, in order to place the provisions in the proper location in the Revenue and Taxation Code, this proposal would delete the new construction exclusion from Section 69.4 in Chapter 2, *Change in Ownership and Purchase*, and establish a new Section 74.7 in Chapter 3, *New Construction*.

Section 69.4 of the Revenue and Taxation Code is amended to read:

69.4. (a) Notwithstanding any other provision of law, pursuant to the authority of subdivision (i) of Section 2 of Article XIII A of the California Constitution, the base year value of qualified contaminated property may be transferred to a replacement property that is acquired or newly constructed as a replacement for the contaminated property, pursuant to subparagraph (A) of paragraph 1 of that subdivision, ~~or if the remediation of the contamination requires the repair or replacement of contaminated property, that repair or replacement shall not be considered "new construction,"~~ pursuant to subparagraph (B) of that subdivision.

(b) The base year value of the original property shall be the base year value of the original property as determined in accordance with Section 110.1, with the inflation factor adjustments permitted by subdivision (f) of Section 110.1. The base year value of the original property shall also include any inflation factor adjustments permitted by subdivision (f) of Section 110.1 up to the date the replacement property is acquired or newly constructed, regardless of whether the claimant continued to own the original property during this entire period. The base year or years used to compute the base year value of the original property shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

Section 74.7 is added to the Revenue and Taxation Code:

(a) For purposes of paragraph (1)(B) of subdivision (i) of Section 2 of Article XIII A, "new construction" does not include the repair or replacement of a substantially damaged or destroyed structure on qualified contaminated real property where the remediation of the environmental problems required the destruction of, or resulted in substantial damage to, a structure located on that property. The repaired or replacement structure must be similar in size, utility, and function to the original structure.

(b) For purposes of this section:

(1) "Substantially damaged or destroyed" means the structure sustains physical damage amounting to more than 50 percent of its full cash value immediately prior to the damage.

(2) "Similar in function" means the replacement structure is subject to similar governmental restrictions, such as zoning.

(3) "Similar in size and utility" means the size and utility of the structure are interrelated and associated with value. A structure is similar in size and utility only to the extent that the replacement structure is, or is intended to be, used in the same manner as the substantially damaged or destroyed structure and its full cash value does not exceed 120 percent of the full cash value of the replaced structure if that property were not contaminated.

(A) A replacement structure or any portion thereof used or intended to be used for a purpose substantially different than the use made of the replaced structure, shall to the extent of the dissimilar use be considered not similar in utility.

(B) A replacement structure or portion thereof which satisfies the use requirement but has a full cash value which exceeds 120 percent of the full cash value of the structure if that property were not contaminated, will be considered, to the extent of the excess, not similar in utility and size.

(4) To the extent that replacement property, or any portion thereof, is not similar in function, size and utility, the property, or portion thereof, shall have a new base year value determined pursuant to Section 110.1.

(c) Only the owner or owners of the property substantially damaged or destroyed in the process of remediation of the contamination, whether one or more individuals, partnerships, corporations, other legal entities, or a combination thereof, shall receive property tax relief under this section.

(d) In order to receive the exclusion provided for in this section, the property owner shall notify the assessor in writing that he or she intends to claim the exclusion prior to, or within 30 days of, completion of any project covered by this section. All documents necessary to support the exclusion shall be filed by the property owner with the assessor not later than six months after the completion of the project.

A claimant shall not be eligible for the exclusion provided by this section unless the claimant provides to the assessor the following information:

(1) Proof that the claimant did not participate in or acquiesce to any act or omission that rendered the real property uninhabitable or unusable, as applicable, or is related to any individual or entity that committed that act or omission.

(2) Proof that the qualified contaminated property has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.

(3) The address and, if known, the assessor's parcel number of the qualified contaminated property.

(4) The date of the claimant's purchase and/or date of completion of new construction.

(e) This section applies to new construction completed on or after January 1, 1995.