



MALIA M. COHEN
MEMBER, SECOND DISTRICT
STATE BOARD OF EQUALIZATION

April 27, 2021

TO: Members of the Board of Equalization

FROM: Malia M. Cohen, Member, Second District

RE: Board of Equalization Board Meeting, April 27, 2021, L.1.a.
COVID-19 Impact on Deadlines for Base Year Value Transfers & Other
Property Tax Deadlines

Discussion and possible Board action to direct the Executive Director to provide the Board recommendations to address the impact of the COVID-19 pandemic on taxpayers who have not been able to complete residential property base year transfers within the Constitutionally required two-year period, and also to consider options to address the impact of the pandemic on taxpayers who face other property tax deadlines.

This Item has been presented so that the Board may consider recommendations to address the impact of the COVID-19 pandemic on taxpayers who have not been able to complete residential property base year value transfers within the Constitutionally required two-year period, and also to consider options to address the impact of the COVID-19 pandemic on taxpayers who face other property tax deadlines.

Background

Given the circumstances surrounding the COVID-19 pandemic, it is appropriate for the Board to inquire if there are additional services or relief that should be provided to taxpayers who face property tax deadline challenges directly traceable to the pandemic.

For example, taxpayers have requested relief because they have been unable to exercise their one-time base year value transfer rights on their principal residence available for taxpayers age 55 and older due to the impact of COVID-19. These taxpayers have been impacted by the almost complete shutdown of real estate services, open houses, etc., that have made it virtually impossible to complete the base year transfer within the Constitutionally-mandated limit of two years, and the provisions of Revenue and Taxation Code section 69.5.

In addition, Proposition 19 changed the requirements for the purchase or new construction of replacement principal residences for victims of fires or natural disasters from five years

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to two years for intra-county disaster relief, and from three to two years for inter-county disaster relief.

At the September 22, 2020 Board Meeting, the Taxpayers' Rights Advocate reported on the impact of COVID-19 on certain taxpayers who were unable to complete new purchases of residences to exercise the one-time base-year transfer of value for taxpayers age 55 and older, stating that the Constitution is very specific that such base-year transfers can only occur within a two-year window.

The Taxpayers' Rights Advocate's comments at the September 22, 2020 Board Meeting mirrored an email that was sent to my office on June 15, 2020 in response to an inquiry on behalf of a constituent. The email from the Taxpayers' Rights Advocate, excerpted here describes the issue: *"The Taxpayers' Rights Advocate Office has received calls from taxpayers with concerns about the two-year time limit to complete the base year value transfer for persons age 55 and older under Revenue and Taxation Code section 69.5 and about possible extensions. Our office has explained that our agency does not have the authority to extend the deadline and the Governor's orders do not apply to the two-year time limit in section 69.5 for the transfer of the base year value from a taxpayer's original property. Additionally, we have advised taxpayers that the two-year time period is not only in statute but also in the Constitution so we aren't certain that the Governor has the authority to extend the time-limit. We encourage them to try to complete the purchase of their replacement home or sell their original home within the two-year time period."*

"Revenue and Taxation Code Section 69.5 implements Section 2 of Article XIII A of the California Constitution; the constitutional provision expressly provides that the replacement property must be purchased or constructed within two years, either before or after, of the sale of the original property as one of the requirements for reassessment not to occur. So given the two year requirement is in the Constitution and not solely in the Revenue and Taxation Code that implements that Constitutional provision, it is problematic; we don't think a Governor's Order could extend the provisions of section 69.5 law without a Constitutional amendment requiring vote of the people. Rather than telling taxpayers that at the Governor's Office can't make such order, we have advised taxpayers that we didn't think the Governor could extend the time-period since it was in the Constitution, but that they would need to ask the Governor's Office."

Section 2 of Article XIII A of the California Constitution provides, "However, the Legislature may provide that, under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age 55 who resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and **purchased or newly constructed by that person as his or her principal residence within two-years of the sale of the original property.**" (Emphasis added.)

As the Constitution is very specific that such base-year value transfers can only occur within a two-year window, the only recourse to provide relief for taxpayers caught in this situation would require the Board to sponsor a narrowly-targeted Constitutional amendment that the Legislature, upon a 2/3 vote of both houses, could refer to the voters at a future

statewide general election.

The Constitutional amendment could extend the deadline for individuals to accomplish a purchase of a qualifying residential property from March 19, 2020, the date Governor Newsom issued the Executive Order N-33-20 directing "**...all individuals living in the State of California to stay at home or in their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors...**" to such time as that Executive Order is lifted, or to such other date that the Legislature determines the economy has been reopened statewide, plus one year. This relief through a Constitutional amendment would be consistent with the administrative relief that has been provided for taxpayers who face or have faced tax deadlines as described here:

- On May 6, 2020, the Governor issued a Executive Order N-61-20 to extend the deadline to pay property taxes that were due on April 10th. This deadline to pay property taxes, without incurring a 10% penalty, has been extended to May 6, 2021 for taxpayers impacted by COVID-19.
- Also, in this Executive Order, the Governor extended the annual filing deadline for the Business Property Statement (Form 571-L) from May 7, 2020 to May 31, 2020 for businesses with personal property exceeding \$100,000 in value.
- Acting upon the request of the Board of Equalization, County Assessors, the California Association of Clerks and Elected Officials, Board, the California State Association of Counties (CSAC), and other stakeholders, the Governor issued Executive Order N-72-20 extending the two-year deadline for Assessment Appeals Boards to complete their official acts until January 31, 2021.
- On September 29, 2020, the Governor signed Assembly Bill 107 that extended the two-year deadline for Assessment Appeals Boards to render a final determination on a qualified application to March 31, 2021.
- Other tax agencies, such as the Internal Revenue Service and the Franchise Tax Board, have extended tax deadlines.

Clearly, the unique impact of COVID-19 presents an opportunity for all of us to seek new and creative solutions for taxpayers who have been deeply affected by this pandemic.

Recommendation

It is in this spirit of providing relief to taxpayers, that I request that the Board ask our Executive Director to review the impact of COVID-19 on taxpayer property tax deadlines, particularly deadlines that cannot be extended because they are fixed in state law or in the State Constitution.

I support a narrowly targeted Constitutional amendment that would grant relief for taxpayers who were unable to complete transactions for newly purchased or constructed principal residences within the time requirement that would have allowed them to take advantage of such base-year value transfers.

Acknowledging the above and the serious impact of the pandemic on taxpayers, I also recommend that the Executive Director consider the following actions in her review process:

- Whether language can be prepared for a Constitutional amendment to extend the two-year base year value transfer deadline contained in Section 2 of Article XIII A of

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the California Constitution, implemented by the provisions of Revenue and Taxation Code section 69.5, for taxpayers age 55 and older.

- Whether the new deadlines mandated under Proposition 19 for the purchase or new construction of replacement principal residences for victims of fires or natural disasters require extensions.
- Whether additional statutory authority is needed to continue to provide relief on all property tax deadlines that have been previously extended for taxpayers due to the COVID-19 pandemic, and any other property tax deadline extensions that may be appropriate.

Based upon the results of this review, the Board may wish to sponsor appropriate Constitutional amendments and additional statutory authority to provide COVID-19 relief for property taxpayers.

We need to expand our thinking on COVID-19 relief. Indeed, we should not think that taxpayers impacted by COVID -19 are permanently "boxed-in" by existing statutory and constitutional deadlines.

Therefore, I respectfully ask my Board Member colleagues to join me in this request.