California State
Board *of* Equalization

Legislative Bill Analysis

Legislative and Research Division

Assembly Bill 571 (Brown)
Date: 02/24/15
Program: Property Taxes
Sponsor: California Assessors' Association
Revenue and Taxation Code Section 69.5, 463, and 483
Effective: January 1, 2016

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Summary: Allows base year value transfers for a parent who must sell their home and buy or build a new one to accommodate a disabled child's needs. Also conforms the reasonable cause standard for abating penalties related to late-filed change in ownership statements and property statements to other property tax law penalty abatement provisions.

Purpose: To assist parents caring for disabled children avoid the costly legal process of adding a minor child to title to qualify for a base year value transfer. Also aligns penalty forgiveness provisions in property tax law.

Fiscal Impact Summary: Unknown, but likely only a small number of additional base year value transfer claims, with each transfer resulting in annual revenue loss of $1,400 per home.

Existing Law: **Base Year Value Transfers.** For property tax purposes, real property is reassessed from its Proposition 13 protected value (called a "base year value") to its current market value whenever a change in ownership occurs.[1] Subject to many conditions, the law allows disabled homeowners to sell their home, buy or build a new one, and transfer the base year value.[2] To qualify, the move must be necessary to meet disability requirements, and the new home must be of equal or lesser value and located in the same county.[3] The base year value transfer allows property taxes to remain essentially the same after the move.[4]

Penalty Abatement. The Revenue and Taxation Code allows taxing authorities to abate various penalties for "reasonable cause."[5] For most provisions, the law specifically allows penalty abatement for reasonable cause and circumstances beyond the taxpayer's control that occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect.[6] BOE property tax provisions for state assessees,[7] the Private Railroad Car Tax,[8] and the Timber Yield Tax[9] use this same standard. But the text differs in the change in ownership and property statement provisions. Those sections provide that penalties can be abated "due to reasonable cause and not due to willful neglect."

Proposed Law: **Base Year Value Transfers.** This bill extends base year value transfer eligibility to any person with a disabled child who resides in the home.

Penalty Abatement. This bill modifies both the business property statement and change in ownership statement penalty abatement provisions to conform the language to other provisions of law by substituting the phrase "circumstances beyond the assessee's control, and occurred notwithstanding the

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[1] California Constitution Article XIII A, Sec. 2
[2] California Constitution Article XIII A, Sec. 2 (a), Revenue and Taxation Code (RTC) Section 69.5
[3] In addition, ten counties offer this property tax benefit to new county residents. Each county has the discretion to accept "intercounty" transfers. Those with active enabling ordinances: Alameda, El Dorado, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, and Ventura.
[4] The property tax payment will not be exactly the same because the precise tax rate and direct levies (special assessments, parcel taxes, etc.) typically vary by location.
[5] The Revenue and Taxation Code contains 76 separate sections authorizing penalty abatement for reasonable cause.
[6] Fifty-six of the 76 RTC sections.
[7] RTC Sections 830 and 862.
[8] RTC Sections 11273, 11316,11534, and 11597.
[9] RTC Sections 38452 and 38577.

exercise of ordinary care and in the absence of willful neglect" for "not due to willful neglect."

In General:

Property Tax System. In 1978, voters changed California's property tax system with the approval of Proposition 13. Under this system, property is reassessed to its current market value only after a change in ownership or is newly constructed. 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 for property tax purposes is redetermined based on current market value. This established value is described as the "base year value." Thereafter, the base year value is subject to annual increases for inflation limited to 2% per year. This value is described as the "factored base year value." This system, established by Proposition 13, can result 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.** In 1986, Proposition 60[10] amended the constitution to allow persons over the age of 55 to sell a principal residence and transfer its base year value to a replacement principal residence within the same county.
- **Intercounty.** In 1988, Proposition 90[11] amended the constitution to extend these provisions to a replacement residence located in another county on a county-optional basis. Currently, ten counties accept transfers from homes located in another county.
- **Disabled Persons**. In 1990, Proposition 110[12] amended the constitution to extend these provisions to any severely and permanently disabled person regardless of age.

The constitution provides, in pertinent part:

> [T]he Legislature may provide that **under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person** over the age of 55 years **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. …
>
> The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years **to severely disabled homeowners.**

RTC Section 69.5 implements all three propositions.

Background:

Related to a child that is a minor, the BOE has previously opined in Property Tax Annotation 200.0076 that a minor may obtain the benefit of a base year value transfer indirectly if a guardianship or trust is created for the minor and the minor is placed on title to both homes. The annotation is reflected in Letter to Assessor's 2006/010, Question A6:

> **A6**: A couple's minor child recently became permanently disabled. As a consequence, the couple must sell their current two-story residence and purchase a single-story residence. Because of

[10] Proposition 60, approved November 4, 1986
[11] Proposition 90, approved November 8, 1988
[12] Proposition 110, approved June 5, 1990.

the child's disability, can the couple purchase a property and file a claim to transfer the base year value from their original property to the purchased property?

Answer: Section 69.5(a) provides that any severely or permanently disabled person may transfer the base year value to any replacement dwelling. Subdivision (b)(3) provides that at the time of the sale of the original property, the claimant (or the claimant's spouse who resides with the claimant) must be severely and permanently disabled. Thus, the disabled child must be the claimant and must be on title in order to transfer the base year value.

A minor may own real property or an interest therein, because the law presumes his acceptance of a beneficial grant (*Estate of Yano* (1922) 188 Cal. 645, 649), but may not convey or make contracts relating to real property, as any such contracts are void.[13] Through proceedings in the Superior Court, a guardian may be appointed for the person, estate, or person and estate of a minor, and real property owned by a minor can be dealt with through guardianship proceedings. Therefore, a minor may obtain the benefit of section 69.5 indirectly through a guardianship or trust. In order to do so, the minor, through his/her trust or estate, must be a beneficial owner (on record title) of both the original property and the replacement property. The act of adding the minor child on title to the original property can be excluded from change in ownership under the parent-child exclusion (assuming a timely claim is filed and the requirements of that exclusion are met).

An adult child could be added to the title of both homes to qualify for the transfer.[14] However, there may be non-property tax related implications for adding a disabled adult child to the home's title.

Commentary:

1. **Disability-based constitutional provisions aren't specific.** The constitution allows the Legislature to extend base year value provisions for persons over the age of 55 to "severely disabled homeowners."[15] While the constitution is silent as to details, it does specify, "the Legislature may provide that *under appropriate circumstances* and *pursuant to definitions* and procedures established by the Legislature, any person…who *resides* in property that is eligible for the homeowner's exemption…may transfer" the home's base year value. Arguably, the Legislature could define a "person" to include a person who has a severely and permanently disabled child who resides with that person.

2. **The amendments don't appear to expressly require that the child reside in the home with the parent.** The bill only requires that the parent has a disabled child. An amendment requiring that the child reside in the parent's home may be helpful to address future implementation issues consistent with the bill's intent. It would also serve to establish the Legislature's definition of "person…who resides in property eligible for the homeowner's exemption." To this end, the BOE suggests the following amendment:

   RTC Section 69.5(g)(12) "Severely and permanently disabled" means any person described in subdivision (b) of Section 74.3. "Person" includes any person with a severely and permanently disabled child who resides with that person.

3. **The amendments don't appear to expressly require that the disabled child be the homeowner's child.** The amendment's language refers to "any person with a severely and permanently disabled child." Thus, it seems that persons other than parents of a disabled child could qualify. For example, any person that cares for the child, such as a relative or friend. Depending upon the bill's intent, clarification on this matter might be helpful to address future implementation uncertainties.

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13 Family Code Section 6701

14 If the child is added on as joint tenant, there would be no reassessment. Additionally, if the child was added as a joint tenant, the parent-child change in ownership exclusion claim could be filed to avoid reassessment.

15 California Constitution Article XIII A, Sec. 2

4. **Non-owning Spouses.** For age-based base year value transfers, involving married couples, the law requires the age-qualifying spouse to reside in both homes, but it doesn't require the age-qualifying spouse to own either home. This bill similarly limits the qualification requirement to residency and not ownership.

5. **Adding a minor child to a home's legal title is costly.** A parent may add a minor child to both homes' titles through a guardianship or irrevocable trust. Once the minor child is a record owner, the child becomes a qualified claimant, and the parent may file a claim on the child's behalf as the trustee or guardian. However, the CAA notes that this is a lengthy, complicated, and costly legal process.

6. **This bill allows parents a simplified and less costly approach.** County assessors state that the law should be modified to allow a parent to directly claim the base year value transfer without any need to add the child to title. County assessors state that allowing these transfers under these limited circumstances maintains the original proposition's spirit and is easily administrable.

7. **Penalty Abatement Conformity.** The county assessment appeals board has the authority to abate certain property tax-related penalties for reasonable cause. Counties note that different standards on "reasonable cause" apply to different county officials and the BOE. One standard applies to the tax collector for late tax payments (RTC 4985.2), to the assessor for allowing the welfare exemption on property in the course of construction (RTC 214.2), and to the BOE for state-assessed taxes (RTC 830, 862, 11273, 11316, 11534, 11597, 38452 and 38577). This results in different standards and possibly different interpretations across jurisdictions. The amendments will align all the property tax laws so that they mirror each other.

8. **Suggested Amendment.** RTC Section 5367, related to penalty abatement for late aircraft statements, should also be amended for conformity.

Administrative Costs:

The BOE would have absorbable costs to update its publications and website.

Revenue Impact:

Background, Methodology, and Assumptions. It is difficult to predict the number of additional transfers this bill would create. Based on information from county assessors, BOE staff estimates the number of transfers would be small. Consequently, staff estimated the impact of a single transfer based on available data. According to the California Association of Realtors, the median California home price in December 2014 was $453,780. The Fiscal Year 2013-14 average assessed value of a property receiving the homeowners' exemption was $314,464. Therefore, for each additional claim granted, the estimated assessed value difference is about $140,000, or $1,400 per transfer at the basic 1 percent property tax rate.

BOE staff estimates minimal revenue impact from changing the abatement of penalties provision related to failure to file a property statement or a change in ownership statement.

Revenue Summary. This bill would reduce property tax revenues at the basic 1 percent tax rate by $1,400 per claim granted. This amount per claim could grow over time if assessed value differences also grow in relation to real estate market values.

Qualifying remarks. Generally, eligibility for the described property tax relief requires a sale of the original property; i.e. a change in ownership subjecting the original property to reappraisal at its current fair market value. This revenue estimate does not account for the change in the assessed value to the original property.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.